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Every effort is made to report the views of authors objectively and accurately, without attempting to comment on them. Since, however, our contributors are fully engaged in their own work, it is impossible to exclude all danger of inaccuracy or misinterpretation. If any of our readers discover any inaccuracies, we hope they will point them out to the editor.

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In this short article, R. remembers Prof. Ivan Žužek SJ who was the secretary of the Pontifical Commission for the Codification of the Oriental Code of Canon Law. R. presents the life and works of this famous canonist and professor.

Ap LXXVI 3-4 (2003), 633-682: D. A. Gutiérrez: Consideraciones sobre teología del derecho canónico codificado. (Article)

This study seeks to expound in an organic and systematic way some personal considerations on the theological dimensions – specifically the biblical, Christological and ecclesiastical – that constitute the definitive substance of the law of the Church. A major focus is given to the law relating to the various forms of consecrated and dedicated life that appear in the Code.

CLSN 142/05, 21-29: J. Jukes: Josef Ratzinger: From Prefect to Pope. (Article)

J. presents some of the canonical aspects of Pope Benedict XVI's background, reviewing the activity of the Congregation for the Doctrine of the Faith during the time when Cardinal Ratzinger was its Prefect (1981-2005) and highlighting some of the controversies the Congregation had to deal with during that period.

ELJ VIII 36 1/05, 60-66: A. Bash: The New Testament, Mosaic Law and Ecclesiastical Law Today. (Article)

B. explores the New Testament's critique of Old Testament law, which he presents as a genus of positive law, and looks at the applicability of that critique to modern ecclesiastical law. He identifies three common misconceptions about the view of the New Testament concerning Old Testament law, and then sets out what the New Testament does say about Old Testament law, principally from the writings of St Paul. He establishes what he sees as the principles underlying the New Testament's critique, which is based not on the natural law but on pragmatic and utilitarian grounds, namely (i) the efficacy of the law to achieve its true intent; and (ii) the extent to which human beings exaggerate the usefulness of Old Testament law. The article concludes by applying the

principles of the New Testament's critique to modern canon law, identifying what B. regards as the proper remit and ambit of ecclesiastical law.

ELJ VIII 37 7/05, 147-161: N. Doe: The Anglican Covenant proposed by the Lambeth Commission. (Article)

The Lambeth Commission (2004) proposed a number of solutions to issues raised by recent and highly controversial developments in the Episcopal Church of America and elsewhere. One of these proposals is the longer-term development of a restatement of the *ius commune* shared by the forty-four Anglican Churches. D., a member of the Commission, describes the terms of this proposed "Anglican Covenant" which builds on his previous work in this area: see *Canon Law Abstracts*, no. 92, p. 2.

ELJ VIII 37 7/05, 186-198: B. Schanda: Church and State in the New Member Countries of the European Union. (Article)

In May 2004 eight former Communist Central and Eastern European countries joined the European Union. Written Constitutions in the region now contain guarantees on freedom of religion together with fundamental statements on Church-State relations. Since the fall of Communism, a net of bilateral agreements has been negotiated with the Holy See. Of the established members of the EU, only Austria, Germany, Italy, Portugal and Spain had Concordats, whilst France and Luxembourg were partly bound by such treaties. Amongst the new member States, only the predominantly Orthodox Cyprus has no contractual relationship with the Vatican. A pragmatic reason for this may be that the new members went through a very rapid legal transition marked by considerable uncertainties after the fall of Communism. The Catholic Church did not seek privileges with the agreements, but rather legal certainty. S. surveys the details of the various Concordats and of the relevant constitutional provisions. He concludes that the standards of religious freedom in the new member States are generally good compared with the rest of Europe. None of the new member States adopted a State Church model, and none of them followed a rigid separation model either. Most new member States chose "benevolent separation" or "cooperation" models. Religious freedom seems to be particularly valued by those who experienced forced secularism during Communist rule.

ELJ VIII 37 7/05, 199-205: J. García Oliva: The Catholic Church and the Socialist Government in Spain: Irreconcilable Differences? (Article)

The political landscape in Spain changed on 14 March 2004 with the election of a socialist government three days after the Madrid terrorist attacks. G. examines the constitutional position of the Catholic Church in Spain under the Spanish Constitution and Concordats with the Holy See in the light of recent legislative proposals. In particular, he looks at the issues of the teaching of Catholic religion in State schools and the "marriage" of gay couples.

FI 2 (2003), 15-34: W. Góralski: Miejsce prawa kanonicznego w kulturze prawnej Europy (The Position of Canon Law in the Legal Culture of Europe). (Article)

Within the entire heritage of the European legal culture, canon law, evolving over centuries, without doubt occupies a significant position. In order to understand better the position of canon law in legal culture one has to take into account the special character of this law as a reality which stems from the very mystery of the Church as a divine and human community (*communio*). The call to *be a Christian*, accepted at the moment of baptism and implemented within the sphere of interpersonal relations in both their divine and human dimensions, is a constituent factor of this community. Apart from these ecclesial roots, the basic characteristics of canon law that differentiate it from secular legal systems are: the person of Jesus Christ as the ultimate source of law; *salus animarum* (realised within a community) as the ultimate objective of the law; the character of interpersonal relations within a community and the object of those relations; and love as the determining factor of justice. G. traces the development and the influence of canon law on legal culture, firstly in the period of antiquity, then in the Middle Ages, and then in the period after the Council of Trent, when it remained solely an internal law of the Church and adopted a purely receptive attitude towards State law. In our time, enriched with the ecclesiology of the Second Vatican Council, the Church and her law can offer the world the category of *communio* as a legal principle; and it is here that the contribution of canon law to the development of the contemporary legal culture is to be found.

FI 2 (2003), 147-157: R. Minnerath: The Experience of the Catholic Church in structuring its relationship with States in the 20th century. (Article)

After setting out some of the consequences flowing from the "trans-national" structure of the Catholic Church, M. briefly outlines how the Church, in her approach to secular States, has always supported the principle of the

independence of the ecclesiastical realm with respect to the political. Until the 1960s, the Church's prevailing doctrine was that Church and State were both "perfect societies", each having independence in their own affairs, though on the basis of mutual cooperation. This was reflected in a number of Concordats, although it also gave rise to serious conflicts in certain countries. This vision of the "perfect societies" was abandoned by the Second Vatican Council. The era of the confessional State was considered over, and the duty of the State was now to respect the religious convictions of its citizens, and to acknowledge their structured communities as having a right to exist and to enjoy a sphere of autonomy within the legal system of the State. The central principle of Church-State relations continues to be that of the independence of both, and their mutual cooperation, the form of such cooperation varying according to circumstances of time and place. M. refers to several post-Vatican II Concordats which reflect the current vision of the Church regarding her relationship with the State – a vision which has also enabled other religious communities to enjoy the same rights of autonomy within the legislation of the different States.

FI 3 (2004), 101-112: R. Sobański: Kościół pierwotny bez prawa? Uwagi polemiczne natury metodologicznej (The Early Church Without a Law? Polemical Remarks of a Methodological Nature). (Article)

See below, Historical Subjects (*First millennium*).

FI 3 (2004), 129-138: A. F. Dziuba: Relacje Zakonu Maltańskiego ze Stolicą Apostolską (The Order of Malta's Relationship with the Holy See). (Article)

D. looks at the relationship of the Order of Malta with the Holy See, especially with regard to its sovereign autonomy and the rights of active and passive legislation which it exercises. Concerning the diplomatic representation of the Order to the Holy See, the most recent Constitutional Charter (1997) simply affirms that the Order has diplomatic representation before the Holy See according to the norms of international law. In fact, the *Annuario Pontificio*, the official yearly handbook of the Holy See, lists the Order under the "Most Excellent Diplomatic Corps before the Holy See" rather than under "Institutes of Consecrated Life". With regard to the Order's rights of "passive legislation", the Supreme Pontiff names as his representative to the Order a Cardinal of the Holy Roman Church with the title of *Cardinalis Patronus*, furnishing him with special faculties in accordance with the Constitutional Charter of the Order. The responsibilities of the Cardinal *Patronus* include the promotion of the spiritual interests of the Order and its members, and the maintenance of relations between the Holy See and the Order.

For XVI/05, 18-20: Pope John Paul II: Protecting human life. (Address)

In this message to mark the tenth anniversary of the Pontifical Academy for Life, Pope John Paul II reminds us that bio-medical breakthroughs can be a threat to human life as well as enhancing it. The role of the Academy is to identify and respond to such issues.

For XVI/05, 29-34: Pope John Paul II: Persons in "vegetative state" deserve proper care. (Address)

This message was given on 20 March 2004 to participants in the International Congress on Life-sustaining Treatments and Vegetative State: Advances and Ethical Dilemmas. Doctors, health-care personnel, society and the Church have moral duties towards persons in this state. Even after a correct diagnosis they retain their human dignity in all its fullness. The provision of food and water is a natural means of preserving life, not a medical act. Moreover it should, in principle, be considered ordinary and proportionate, and therefore obligatory until it has attained its proper finality.

For XVI/05, 46-63: Congregation for the Doctrine of the Faith: Letter to the Bishops of the Catholic Church on the collaboration of men and women in the Church and in the world. (Letter)

The Congregation identifies two tendencies in recent years. The first is focused on the subordination of women. The second seeks to avoid the domination of one sex by the other by seeing any differences as the mere effect of historical and cultural conditioning. The document responds to these by looking at the basic elements of the Biblical vision of the human person, and then the importance of feminine values for both society and the Church.

For XVI/05, 68-74: Holy See: Considerations on the issue of human cloning. (Message)

Following a debate in October 2004 at the United Nations on the question of reproductive and therapeutic human cloning, the Holy See sent this message to member States to clarify the issues in the eyes of the Church.

For XVI/05, 83-86: World Federation of Catholic Medical Associations & Pontifical Academy for Life: Challenges for the field of health care. (Joint statement)

At the end of a four-day congress the Federation identifies fourteen ethical issues that need to be considered.

IC XLV 89/05, 143-181: J. M. Vázquez García-Peñuela: La enseñanza de la religión católica en España: algunos aspectos de sus regulaciones tras la Constitución de 1978. (Article)

G.-P. looks at the various models of Catholic education in Spain following the 1978 Constitution.

IC XLV 89/05, 295-305: J. Otaduy: Crónica de legislación 2004. (Report)

O. presents a review of Spanish legislation from 2004 with most relevance for ecclesiastical law (particularly the teaching of religion, higher education, ministers of worship, the competence of civil administrations in religious matters, and financial affairs).

IC XLV 89/05, 307-335: J. Otaduy: Crónica de jurisprudencia 2004. (Report)

O. presents a review of the 2004 decisions of the European Court of Human Rights concerning the right to religious freedom, and the main decisions of Spanish courts involving issues of ecclesiastical law.

IC XLV 90/05, 609-629: María Elena Olmos Ortega: Derecho canónico y formación del jurista. (Article)

After stating that canon law has stronger historical roots than any other legal system in force, O. points out that it is of general interest for any lawyer. It has influenced the shaping of Continental European law, and has helped broaden the outlook of lawyers. She then looks at canon law as part of the Spanish civil law degree. At present it is not an obligatory subject, but she considers that it still has an important role to play.

IC XLV 90/05, 693-754: P. Gherri: Teologia del Diritto canonico: note per individuare la nuova disciplina accademica. (Article)

G. offers a series of reflections on the new subject of "theology of canon law" which now forms part of the first cycle in canon law faculties following the decree of the Congregation for Catholic Education of 2 September 2002. The term "theology of law" (or "theology of canon law" – the phrases have tended to be treated as interchangeable) has been used in the second half of the twentieth century by many different authors, and has caused confusion and ambiguity. In the climate of anti-juridical mistrust which accompanied the revision of the Code, the suggestion of Pope Paul VI that canon law be considered in a "theological" way was accepted by many authors as a chance to "appropriate" a generic formula, frequently using it for ideological purposes. Most of these developments can be traced back to K. Mörsdorf, who insisted on creating a "theology of [canon] law" as the "foundation" for the legitimate presence of [canon] law within the Church seen as "communion" and guided by the charisms of the Spirit. There were further developments in later decades, among which is to be included the latest anthropological and theological proposal of G. Ghirlanda, recently reinitiated by M. Visioli. Other authors such as F. D'Agostino and D. Composta also took advantage of the opportunity. Nevertheless the most problematic contribution is that of E. Corecco, who used the phrase "theology of [canon] law" to indicate what should really have been described as a "general theory of canon law". This approach, together with other "sensationalist" suggestions such as the interpretation of the concept of canon law as *ordinatio fidei* instead of *ordinatio rationis*, and the replacing of the *analogia entis* by the *analogia fidei*, lead in G.'s view to serious problems. The possibility offered by the 2002 reform of canonical studies is, he argues, that of a "theology of canon law" as a supra-disciplinary introduction to the necessary relationship between theological and canonical sciences.

IE XVII 1/05, 3-27: P. G. Carozza: The Universal Common Good and the Authority of International Law. (Article)

John Paul II spoke of the need to "rediscover" the value of the natural law in the relations between States. Indeed, to reinvigorate and reassert the distinctive contribution of the Church to international law for the twenty-first century requires a return to some of the first principles of natural law. C. writes on the basic theoretical dilemma of modern international law: more recent theories of the modern international legal system have had difficulty in defending the basis for its binding authority. He studies at length the universal common good especially in the light of *Pacem in Terris* and *Sollicitudo Rei Socialis*. He then moves on to look at the relationship of the universal common good to the existing rules and institutions of international law. In view of these

observations, he sets out what he sees as the responsibilities of States with respect to those institutions today.

IE XVII 1/05, 29-54: J. Fornés: La libertà religiosa in Europa. (Lecture)

F. introduces his lecture with a suggestion as to what – politically and historically – can be considered Europe today. He proceeds to give a detailed account of the condition of religious freedom in the various countries of the Continent. He summarises into three points the characteristics of Community Law, as the supra-State and supra-national juridical system that constitutes a true law within the States of the European Union. Several examples are given to illustrate the indirect regulation of the right to religious freedom: labour issues, radio and television, authors' rights, personal data and, finally, historical and artistic patrimony. The article ends with a shorter section on the hopes for institutional relations between the European Union and the religious Confessions.

IE XVII 2/05, 347-384: P. Landau: Il concetto giuridico del diritto ecclesiale in prospettiva filosofico-storica. (Article)

The author of this article, a well-known German jurist and historian of law, belongs to the Evangelical Confession. The editor of *Ius Ecclesiae* trusts that this article may be a positive contribution to ecumenical dialogue in the realm of ecclesial law, and an occasion for a better understanding of it within the Catholic sphere. L. introduces his work with an examination of the position of law in Kant, Fichte and Hegel and, more specifically, the doctrines of ecclesial law in Puchta, Stammler, and later Germans such as Sohm, Heckel and Dombois. From a philosophical perspective, L. proposes that, only if the definitions of ecclesial law proposed so far prove inadequate should a specific concept be sought for it; hence he studies approaches such as those of Aristotle, Gratian, Hobbes and Kelsen, and others in the German-speaking world. Concerning the issue of the validity of law, L.'s article gives special relevance to the study of *communio*, and devotes a long section to "justice". In the modern philosophy of law, L. proposes that the concept of "certainty" runs side by side with that of "justice". Subjective rights and fundamental rights, as well as the remaining problems regarding the philosophical foundation of ecclesial law, lead to a brief conclusion that ecclesial law has a constitutive function, rather than a secondary regulatory function, for the Christian Church, and that ecclesial law belongs to the *esse* of the Church rather than to its *bene esse.*

J 65 (2005), 1-30: Charles Donahue Jr.: A Crisis of Law? Reflexions on the Church and Law over the Centuries. (Article)

D. considers that the crisis of law is something worse than bad lawyers. In the course of 2000 years we are trying to solve present problems with yesterday's solutions and the result is a "methodological quagmire". The absence of what looks like law in the New Testament may be more apparent than real. The early Church was a mission to all humanity – Jew, Greek, slave, free. An authority is needed to avoid sects. He holds that the answer lies in *koinonia*: "a mysterious concept in all periods of Church history". He traces the increased development of law through its various phases. By the thirteenth century the close connection between canonical discipline and the work of theologians had broken down, and in the modern period this academic separation of canon law and theology had a profound effect on canonists.

J 65 (2005), 181-204: Myriam Wijlens: "That all may be one…" (John 17:21). The Lord's Prayer in the Work of Canon Lawyers: A Mere Option? (Article)

This article, which W. dedicates to the late James H. Provost, stresses the ecumenical emphasis of Vatican II. It also underlines ecumenical actions *ad intra* and *ad extra.* Since Vatican II shows "genuine dialogue where one is not only willing to give but also to receive, and even more to listen", W. gives instances of changes in language that underline this attitude in action. There is a change from focusing on what divides us to what is held in common. All this requires a conversion of canon lawyers themselves.

Per XCIV 4/05, 587-620: A. Remossi: Il concetto di rappresentatività nell'ordinamento canonico. (Article)

In this article, R. shows how the term "represent" has several meanings in canon law. She considers how a variety of individuals and bodies can be said to represent others within the Church. These forms of representation or of participation and co-responsibility are not simply a response to the demands of efficiency, but are solidly based on theological doctrine highlighted by Vatican II.

Per XCIV 4/05, 681-702: O. De Bertolis: La libertà religiosa: problemi e prospettive. (Article)

The problem of religious freedom is something that has been part of the foundation and background of modern Western history. Behind this problem lie other questions of a philosophical and political nature: the relationship between truth and authority, the limits of civil law with respect to the divine law, the relationship between civil power and ecclesiastical authority. In this article, De B. considers some important aspects of the problem. He traces the origins of the question of religious freedom from the sixteenth century, through the new perspective opened by Pope John XXIII, to the Conciliar Declaration *Dignitatis Humanae*. In the new perspective that has opened up, it is clear that religious freedom is an integral part of the safeguarding and promotion of human rights. The Church no longer demands a position of privilege but shares in the freedom given to all.

Proc CLSA 10/04, 313-322: Siobhan Verbeek and others: To Address Issues concerning Lay Canonists and their Ministry in the Church. (Committee Report at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

The committee carried out a survey of arrangements by diocese to sponsor lay people studying for the licentiate in canon law. They sent questionnaires on this to all lay members of the CLSA and report in detail on the replies.

Proc CLSA 10/04, 424-456: Index CLSA Proceedings. (Index)

This provides an index, by author, by title and by topic, to all articles in the Proceedings of the Conventions of the Canon Law Society of America, from volume 57 (1995) to volume 65 (2003) inclusive.

RDC 54 1-2/04, 15-47: F. Messner: La «reconaissance» des religions en Europe. L'exemple des mécanismes d'accès aux statuts et aux régimes des cultes. (Article)

The relationship between Church and State in the "European model" acts on two distinct levels. The first concerns the protection of religious freedom, while the second refers to the organisation and support of those religious groups recognised by the authorities. Going beyond the differences between individual nations, the European system is based upon the State's religious neutrality alongside self-governing religions. However, cooperation between the State and

religious groups is permitted. Recently, States have been required to re-examine themselves in order to ascertain the religions and systems of belief considered to be of most importance and therefore likely to be supported.

RDC 54 1-2/04, 49-65: G. Gonzalez: Convention européenne des droits de l'homme, cultes reconnus et liberté de religion. (Article)

The European Convention on Human Rights respects the freedom of member States to organise their own relationships with religious groups. Numerous judgements have revealed the wish of the European Court of Human Rights to remain neutral with respect to these different systems of organisation. This attitude is justifiable but occasionally proves to be excessively cautious. Nevertheless, whilst the Court does not voice itself upon the organisation of religious relations in the various States, it is lawfully concerned with the consequences. Thus the promotion of religious freedom by the jurisprudence of the Court engenders a certain standardisation of the policies of the member States in this domain. Influenced by the Convention, the States, whether denominational, lay or mixed, progress towards a respectful attitude to religious diversity. However, the teaching of denominational freedom is far from being achieved.

RDC 54 1-2/04, 67-75: I. C. Ibán: La pertinence des cultes reconnus dans les systèmes de relations États/religion dans l'Union européenne. (Article)

Religion falls within the European Union's sphere of influence. Therefore it has opted to become involved in this domain and to endow itself with an appropriate law touching the question of religion. The principle to be conserved will most likely correspond to the notion of "recognised religion" which is already employed by several nations. A recognised religion is a collection of people united by a religious belief which the State has recognised and to which it accords certain advantages. The States which practise the system of religious recognition are required to set up a list of those groups which have received such recognition. The Union should thus give a definition of the concept of "recognised religion", establish the steps needed to obtain recognition, and decide which religions should be included in the list. In order to achieve this, it will adapt legal concepts which already exist in the member States.

RDC 54 1-2/04, 77-106: R. Torfs: Les cultes reconnus en Belgique. (Article)

Article 181 of the Belgian Constitution says that: "The State is responsible for the salary and pensions of religious ministers". Religious ministers' pay stems

from both an indemnity and a compensation for the social service rendered. The difficulty lies in the definition of the notion of "recognised religion" which has not been determined by the Constitution. Furthermore, a constitutional revision in 1993 amended article 181 to include "organisations recognised by the law which offer moral assistance according to a *non-denominational* philosophical foundation", engendering further difficulties of interpretation of the expression "non-denominational".

RDC 54 1-2/04, 107-120: A. Pauly: Les cultes reconnus au Grand-Duché du Luxembourg. (Article)

In order to establish the legal system for Church-State relations in Luxembourg, several borrowings were made from foreign systems. A provision of the Constitution is that the various religions are able to create accords with the State. This constitutional allowance has led to the recognition of the Roman Catholic religion, the Protestant faith, the Reformed Church, the Jewish religion, and the Greek Orthodox Church. On 31 October 1997 the government signed financial agreements with these five religious groups, deemed to be the most demographically representative. Yet the system in Luxembourg is deficient in providing a suitably precise definition of the notion of recognised religion. The legal situation remains unclear. Such questions as the upholding of the Concordat, the possible retraction of religious budgets, and the conditions that lead to recognised religion status, are posed in the course of religious and sociological developments.

RDC 54 1-2/04, 121-139: Brigitte Schinkele / Wolfgang Wieshaider: Le statut juridique des communautés religieuses en Autriche. (Article)

The 1867 "Law on the General Rights of Citizens" in Austria guarantees the freedom of individual conscience as well as the right of Churches and religious communities to be self-governing. Those religions which are recognised are public bodies. A law of 1998 modified the conditions leading to religious recognition: the religion must have existed for at least twenty years, during which it must have been registered for ten years and represent at least 2% of the overall population (in other words, it must have more than 15,000 members); it must make use of its assets for exclusively religious purposes, accept the general principles of the State and Austrian society, and respect religious peace. These conditions appear much too restrictive. The same law of 1998 also created a second status: that of the religious association, a private body for which 300 members suffice as a condition for recognition. Yet even this reduced status remains too restrictive: those religious groups with fewer than

300 members are obliged to declare themselves non-profit-making associations, for which three members are sufficient.

RDC 54 1-2/04, 141-150: R. Pahud de Mortanges: Les communautés religieuses reconnues de droit public en Suisse. (Article)

In Switzerland, ecclesiastical law does not come under the Federal State's authority but that of the cantons. Historically, the cantons recognised the most popular denomination established upon their territory and bestowed upon it the status of Religion of the State. It was not until the twentieth century that the cantons began to treat the Reformed Evangelical Church and the Roman Catholic Church on equal terms by awarding them both a status upheld by public law. This status places both denominations in a privileged position. In exchange the State requires that they respect a democratic structure including the separation of power. This request has led the Catholic Church to create a "structure of ecclesiastical law" which is opposed to the ecclesial structure. Nowadays, changes in the religious life of Switzerland have given rise to the question of the recognition of other religious communities to which several cantons are favourable. For Swiss society this implies an effort to become familiar with and to embrace those religions which have recently sprung up on its soil.

RDC 54 1-2/04, 151-162: S. Ferrari: Le régime des cultes reconnus en Italie (avec quelques références à l'Espagne). (Article)

The issue is that of the status of religious denominations in Italy (other than the Catholic Church, of which recognition is prescribed in the Constitution). Article 8 of the Italian Constitution accords rights to religious denominations (equality in the eyes of the law, internal autonomy, and the possibility of entering into agreements with the State), without requiring previous recognition by the State. On a general level the legal rights of all religious denominations are acknowledged and not only those of the religious groups bearing "recognised religion" status. Nothing is asked of them other than a respect for morality, as for any morally upright person. The Italian legal system mostly favours religious devotion and asks for the participation of religious denominations in the development of the national community. The main advantage of recognition by the State is financial. However, the criteria leading to recognition are also of a political order, from which the question arises as to the equality of religious denominations in the eyes of the law.

RDC 54 1-2/04, 163-168: J. U. Jörgensen: Le système danois. (Article)

Responsibility for the administration of the national Church in Denmark lies with the Ministry of Religion, whose powers of supervision also extend to certain other religious communities. The unifying factor relating to all of the different denominations, of which the national Church is the majority holder in terms of numbers of members, is the principle of religious freedom. As far as the other denominations are concerned, registration is optional. Only those that are registered may benefit from financial support from the State. Likewise, civil status is awarded to the national Church and to the registered communities. For the conditions leading to recognition, the deciding element is the "worship" aspect of the association: it must have as its sole object the worship of God in respect of a teaching containing well-defined practices. A mere movement of a religious or philosophical nature does not qualify.

RDC 54 1-2/04, 169-177: A. Hollerbach: Le droit ecclésiastique de l'État allemand: un «système des cultes reconnus»? (Article)

German ecclesiastical law makes a distinction between communities of private legal origin and those classed as "public bodies". From this latter status stems the legal capacity of the community and the rights and obligations which are attached to it (power of organisation, recognition by the State of an internal disciplinary system, submission of assets to public law, etc.). The German system therefore rejects the idea of radical secularism. According to the Constitution, religious communities are considered to be of use to the nation yet are not subject to State supervision.

Can we therefore speak of a "system of recognised religions" in German ecclesiastical law? The status of corporation inevitably brings with it an element of recognition. The State must be able to identify the partner with which it is dealing. The criteria are the number of members and the guarantee of the group's longevity. It is therefore the organisation of the community which is taken into consideration; the State is devoid of discretionary power in the matter. On the other hand, the community commits itself to accepting the constitutional principles of neutrality, equality, secularism and tolerance. Yet the absence of discretionary power on the part of the State, and the application of the fundamental law of religious freedom to the religious communities, prevent the possibility of speaking of "recognised religions" in this system.

RDC 54 1-2/04, 179-191: P.-H. Prélot: Le système français de séparation des Églises et de l'État: éléments pour une approche comparée. (Article)

Most French people consider secularism (*laïcité*) to be one of the founding principles on which the identity of the Republic is grounded. This choice manifests itself in the law of 1905 by the affirmation of principles such as the freedom of individual conscience, the right to choose whether or not to believe, freedom of worship, the absence of official recognition of religions, and the forbidding of public financing of them. However the term *laïcité* is not itself legally defined. It is only by comparison with the legal organisation of other European systems that it is possible to identify what is specific to the French system. The proclamation of religious freedom in France has been tied since its very beginning to the wish that the State be built upon a foundation of religious neutrality. Secularism is therefore seen as a means of ensuring freedom. At its origin there were three essential points: institutional freedom of religion, respect for religious practices, and a religious policy on the part of the State. The State's religious policy often takes a favourable view of those religions that were already present on its soil in 1905 (Catholicism, Protestantism and Judaism). This policy is driven by the concern for public protection, yet it is called into question by the growing influence of other religions (Islam and Buddhism).

RDC 54 1-2/04, 193-208: N. Doe: Religions et droit au Royaume-Uni. (Article)

As in most European countries, in the United Kingdom religion is an important social phenomenon. Religious groups are numerous and represent a large spectrum of diverse beliefs. From 1530 until the seventeenth century legal arrangements were defined by great religious intolerance. From 1689 onwards a new, more liberal political system was established, features of which are also apparent in modern legislation.

The legal status of communities is determined by three fundamental principles: the notion of religion, the concept of establishment, and the idea of the religious association. The relationship between legislation and religion in the United Kingdom encounters the following difficulty: there are several models which are occasionally contradictory. On the one hand, the fundamental right to religious freedom has led to the provision of a common legislation. On the other hand, one notices inevitable disparities in the treatment of individual religions, that is to say, discriminations on the part of the State in favour of the "established" religions.

SCL I (2005), 15-20: Pope Benedict XVI: Presentation of the Compendium of the Catechism of the Catholic Church. (Address)

This is the text of the Pope's introduction of the *Compendium of the Catechism* given on 28 June 2005. He hopes it will be a clear and accessible document, with a harmonious expression of the Faith in dialogue form.

TPQ 153 (2005), 82-87: H. Kalb / S. Lederhilger: Römische Erlässe. (Documents)

Summaries are provided of the Instruction of the Pontifical Council for the Pastoral Care of Migrants and Itinerant People *Erga migrantes caritas Christi* (3 May 2004); the Letter of the Congregation for the Doctrine of the Faith *On the Collaboration of Men and Women in the Church and in the World* (31 May 2004); and the Apostolic Letter of Pope John Paul II *Mane Nobiscum Domine* (7 October 2004).

HISTORICAL SUBJECTS

First millennium

FI 2 (2003), 15-34: W. Góralski: Miejsce prawa kanonicznego w kulturze prawnej Europy (The Position of Canon Law in the Legal Culture of Europe). (Article)

See above, General Subjects.

FI 3 (2004), 101-112: R. Sobański: Kościół pierwotny bez prawa? Uwagi polemiczne natury metodologicznej (The Early Church Without a Law? Polemical Remarks of a Methodological Nature). (Article)

This article was directly inspired by a sentence in an article by A. Żurek, who claimed that in the early fourth century "it is hard to talk about the existence of ecclesiastical law", and that what had existed up to then "could be described as Church discipline", which consisted of "moral norms derived primarily from Holy Scripture, made more and more precise thanks to the teaching of the individual bishops; dispersed provisions regulating the life and activity of emerging ecclesiastical institutions, adopted most often by local synods". These statements provoked S. into examining two issues: the picture of the Church before Constantine the Great, and the notion of law. S. takes up the latter issue in the belief that its definition will shed light on the former question. Thus the "polemical remarks of a methodological nature" focus on the analysis of such terms as "discipline", "habitual norms", "dispersed regulations", and "*lex christiana antiqua*", with a view to conducting more general analyses related to methods of comparative legal studies and the ontology and epistemology of ecclesiastical law.

IC XLV 90/05, 487-528: O. Condorelli: Ejercicio del ministerio y vínculo jerárquico en la historia del Derecho de la Iglesia. (Conference presentation)

The subject of the incardination of the clergy, the historical development of which C. discusses here, involves aspects that reflect certain ecclesiological standpoints. C. takes as his starting point the Second Vatican Council, and examines the question retrospectively. The Council emphasised the ministerial significance of the ordination of priests, and linked the canonical discipline of incardination with the notion of service, within the Church and for the Church, whereby ordination finds its true fulfilment. The Council thus followed the line

of a tradition which was already evident in the liturgical and canonical testimony of the early Church. O. looks at the most important historical stages of the institute of incardination, from the ancient Church to the reforms of the Council of Trent.

QDE 18 (2005), 228-258: R. Coronelli: Origine e sviluppo del precetto domenicale e festivo. (Article)

See below, Historical Subjects (*1917 Code*).

Classical period

FI 2 (2003), 15-34: W. Góralski: Miejsce prawa kanonicznego w kulturze prawnej Europy (The Position of Canon Law in the Legal Culture of Europe). (Article)

See above, General Subjects.

FI 2 (2003), 35-59: P. Ryguła: Kanoniczne korzenie *Common Law* na podstawie analizy instytucji *Court of Chancery* i *courts Christian* (Canonical Foundations of *Common Law* on the Basis of an Analysis of the Institutions of the *Court of Chancery* and *Courts Christian*). (Article)

The eleventh and twelfth centuries were a period of major transformations in the entire territory of today's Western Europe. Cities were developing, trade was flourishing, and medieval universities, led by the University of Bologna, were being established, where law was taught as a separate branch of learning. Once again the idea was expressed of a unified Europe with a single system of laws common to the various nations of the Continent. The Church likewise underwent reforms. It was at that time that the internal law of the Church, canon law, was formed.

The inhabitants of the British Isles also experienced significant political, economic and cultural changes. The Norman Conquest introduced a strong, centralised authority and a new system of Western law known as *common law*, applied by royal courts throughout England.

The *ius commune* of Continental Europe was by its nature different from the English *common law*. It has to be borne in mind, though, that at the time of William the Conqueror's invasion the country was a Christian kingdom in the full sense of the term; it belonged to the single political and religious structure

of the Europe of that time. It is hard to imagine, then, that despite the isolation of the English kingdom from the rest of the Continent, English law during its development throughout the centuries was not influenced by the omnipresent universal law system in use outside England, i.e. by classical canon law. In practice, different branches of the legal system of England, some rooted in the Anglo-Saxon system, others of Continental origin, intermingled with each other.

R. analyses this overlap of the influences of *ius commune* and *common law*, scrutinising the functioning of royal courts, the Court of Chancery and ecclesiastical tribunals, coexisting in the territory of old England.

IC XLV 89/05, 183-231: F. Martínez Martínez: La superioridad del Derecho divino en el pensamiento pregracianeo: una visión de las colecciones medievales. (Article)

The conception of classical canon law as a legal order involving the coexistence of two legal systems (one of divine origin, the other human) also serves as a mirror to reflect the relationship between canon law and secular legal systems. Between the time of St Isidore of Seville (seventh century) and that of Gratian (twelfth century), the historical evolution of canon law consistently emphasises the subordination of every legal order to the Divinity, and by extension, the primacy of "ecclesiastical" law over "human" law. M. looks at three contributions which led to the formation of a universal canonical compilation: the works of Burchard of Worms, Anselm of Lucca, and Ivo of Chartres.

IC XLV 90/05, 431-485: J. M. Viejo-Ximénez: La composición del Decreto de Graciano. (Conference presentations)

This article combines the texts of, and adds footnotes to, two presentations given by V.-X. at a conference held at the University Peter Pazmany (Budapest), 9-10 May 2005. V.-X. holds that Gratian's *Concordia canonum discordantium* was written gradually, and underwent various revisions, as a consequence of its being used within a teaching milieu. Manuscripts *Aa Bc Fd P Sg* make it possible to reconstruct the stages prior to the version published in the second half of the twelfth century (the *Decretum divulgatum*). *Aa Bc Fd P* contain an old composition, the *Concordia*, but also show the revisions and enlargements by which the *Concordia* developed into the *Decretum* (c. 1150). *Aa Bc Fd P* do not point to the existence of a supposed "first redaction". The *Exserpta ex decretis Sanctorum Patrum* of *Sg* are logically prior to the *Concordia* of *Aa Bc Fd P*, and are in no way an abridged version of the *Concordia. Sg* is a secondary manuscript, but it is the only available evidence of an early version, which was later enlarged upon and thoroughly revised in terms

of structure, expressions and style. Consequently the critical edition of the *Decretum Gratiani* should reflect these various stages – *Exserpta, Concordia, Decretum,* and *Decretum divulgatum* – and should also show the intermediate stages which each section of the work underwent.

IC XLV 90/05, 487-528: O. Condorelli: Ejercicio del ministerio y vínculo jerárquico en la historia del Derecho de la Iglesia. (Conference presentation)

See above, Historical Subjects (*First millennium*).

16th-18th centuries

CLSN 142/05, 13-20: D. Hogan: Pope Benedict XIV and Canon Law. (Article)

H.'s article is based on a paper given to the Canon Law Society of Great Britain and Ireland in 2003. H. looks at the pontificate of Benedict XIV (1740-1758) and how he dealt with the problems he encountered, and also the relevance of his response for today.

ELJ VIII 36 1/05, 80-83: P. E. S. Barber: England's Last Bachelors and Doctors of Canon Law. (Article)

On 11 December 2002, the University of London became the first university in England to award a degree in canon law since the reformation. B. traces the history of the last of those previous graduates, beginning shortly before the suppression of the faculties of canon law in 1535, and continuing with the brief revival under Queen Mary. He concludes that the Rt Revd Dr Nicoló Ormanetto DCL(Padua) JCD(Oxon) JCD(Cantab), later bishop of Padua, was probably the last to graduate from an English university, in 1557. It is also possible that one of the graduates was still alive in 1614, when Heythrop College, the origin of the most recent degrees, was founded.

FI 2 (2003), 15-34: W. Góralski: Miejsce prawa kanonicznego w kulturze prawnej Europy (The Position of Canon Law in the Legal Culture of Europe). (Article)

See above, General Subjects.

RDC 55 1/05, 95-132: C. Munier: Les annotations de Beatus Rhenanus à son exemplaire du Décret de Gratien. (Article)

Beatus Rhenanus annotated his personal copy of the Decree of Gratian. This humanist from Alsace, who was a friend of Erasmus, left a unique testimony of those aspects of canon law which most interested him, such as ecclesiastical hierarchy and order among the clergy, as well as parish life with its liturgical practices, the monastic world, and aspects of Christian marriage and penal law.

19th century

ELJ VIII 36 1/05, 21-31: R. Ombres: *Connelly v Connelly* (1851): The Trials of a Saint? (Article)

O. examines the mid-nineteenth century case whereby a Catholic priest brought an action in the English ecclesiastical courts for the restitution of his conjugal rights with his wife, then Sr., now Venerable Cornelia Connelly, foundress of the Society of the Holy Child Jesus. The background was renewed hostility against Catholics in England as a result of the restoration of the hierarchy. The case involved important issues of the effect in England of a Catholic sentence of voluntary separation. O. follows the litigation through the Court of Arches and the Privy Council until its eventual abandonment by the husband.

Per XCIV 4/05, 647-680: E. Lohse: The origin and nature of the suspension *ad cautelam* of article 4 of the 1980 *Normae procedurales* for dispensations from celibacy – part 1. (Article)

See below, canons 290-291.

1917 Code

AkK 173 1/04, 119-145: M. Conrad: Vorgängergremien des Pfarrgemeinderates in Deutschland. (Article)

C. deals with the predecessor body of the parish council in Germany. Parish councils came into existence there in 1967. Before that there were parish committees to deal with the same tasks. C. looks at the origin and functions of the parish committee, its functions after World War II, and the experiences of such committees.

Ap LXXVI 3-4 (2003), 827-898: P. Gherri: Il primo Codice di diritto canonico: fu vera codificazione? (Article)

G. sets out to counter the position of those writers who hold that the 1917 Code is to be seen as a belated response by the Church to advances in the construction of civil Codes in Europe, especially that of Napoleon at the start of the nineteenth century. He approaches this question with a lengthy survey of the antecedents to the work initiated by St Pius X and completed under Pope Benedict XV. G. gives detailed consideration to the legal backgrounds of both Popes in proof of the uniqueness of the 1917 Code.

FC 7 (2004), 119-138: A. Saje: The preparation of canon 1098 *CIC*/17 on the extraordinary form of the celebration of marriage from the beginning of the work of the Pio-Benedictine codification of 1904. (Article)

See below, canon 1116.

FI 3 (2004), 195-229: Z. Tracz: El iter redaccional de los cánones 953 y 2370 del Código de Derecho Canónico 1917 (un ejemplo del proceso de elaboración del primer Código de Derecho Canónico). (Article)

The 1917 Code contains the first legislation issued by the supreme Legislator concerning the faculty of conferring episcopal consecration. T. gives a brief general history of the process of the 1917 Codification, before looking specifically at the various discussions, proposals and drafts that were to result in canon 953 of the 1917 Code, which reserved episcopal consecration in the Latin Church to the Roman Pontiff (other bishops only being allowed to ordain if they had a pontifical mandate). He also studies the process of formation of canon 2370, the penal canon introduced to protect the exclusivity of the pontifical power of consecrating bishops.

Per XCIV 4/05, 647-680: E. Lohse: The origin and nature of the suspension *ad cautelam* of article 4 of the 1980 *Normae procedurales* for dispensations from celibacy – part 1. (Article)

See below, canons 290-291.

QDE 18 (2005), 228-258: R. Coronelli: Origine e sviluppo del precetto domenicale e festivo. (Article)

C. looks at the origin and development of the Sunday obligation from its first formulation up to the 1917 Code. In the first three centuries there was no formal legal prescription from the ecclesiastical authority, but the custom arose from the very beginning of gathering on the "day of the Lord", and this was treated as a serious obligation. This custom/requirement later gave rise to canonical norms, which in turn generated a binding universal custom, eventually codified in a universal law of the Church, the Code of 1917. The obligation to abstain from certain works on the Lord's Day resulted from the need to allow the faithful to dedicate themselves to prayer in common, without hindrance or distraction. The prohibition on certain jobs and trades was not simply because those tasks were considered less worthy, but was designed to lighten the load on workers and thus allow them to sanctify Sundays and feast days in peace and tranquillity. In the Middle Ages, when there was a proliferation of feast days, the difference between Sundays and feast days became somewhat blurred, as is reflected in canon 1247 of the 1917 Code, where Sundays are treated no more specially than other feasts in the list of days of obligation. The ecclesial and community aspect of the Mass obligation also became rather lost from view behind legalistic considerations. The reflections of Vatican II have gone some way to restoring some of the aspects which had become obscured.

Second Vatican Council and revision of the CIC

IC XLV 89/05, 55-87: V. Gómez-Iglesias C.: El plan de revisión de las leyes de la Iglesia en el Sínodo de Obispos de 1967. (Article)

When studying the fifth directive Principle for the revision of the Code of Canon Law, the General Assembly of the Synod of Bishops (1967) examined the question of whether there should be one Code for the whole Church, or whether the new Code should apply only to the Latin rite Church; in the latter case, should there be a Code – or even several Codes – for the Eastern Catholic Churches? This topic had not been scheduled for the Assembly, but the Synod could not avoid dealing with it. As a result of this discussion, the majority of the synodal Fathers decided favourably on the suitability of promulgating a Fundamental or Constitutional Law prior to the other Codes or legislations for the Latin or Eastern Churches. This would ensure juridical unity on essential matters, and substantially confirm the revision plan approved by the Plenary Assembly of the Pontifical Commission for the Revision of the CIC in November 1965: namely two Codes – Latin and Eastern – preceded by a Fundamental or Constitutional Law.

IE XVII 2/05, 335-344: Z. Grocholewski: Giovanni Paolo II, Legislatore. (Article)

G. gives a brief summary of John Paul II's legislative canonical activity during the years of his pontificate. He expresses his surprise when, expecting the project for the 1983 Code to be sufficiently mature and ready to be signed without much difficulty, the Pope invited seven canonists from different countries and scientific environments to help in the work of revision, over which he had ultimate responsibility. Something similar occurred with the Code of Canons of the Eastern Churches, and with *Pastor Bonus*, dealing with the reform of the Roman Curia. G. concludes that, despite not being formally a canonist, the Pope put such personal effort into studying these three legislative documents and reflecting upon the material that had been prepared with the help of the entire Church, that he made them truly his own.

CODE OF CANONS OF THE EASTERN CHURCHES

Ap LXXVI 3-4 (2003), 683-726: L. Natale: Il culto eucaristico nella legislazione della Chiesa cattolica. I rapporti tra CIC e CCEO. (Article)

See below, canon 897.

ETL 81 4/05, 435-467: J.-P. Schouppe: Les circonscriptions ecclésiastiques ou communautés hiérarchiques de l'Église catholique. (Article)

See below, canon 199.

IC XLV 89/05, 271-292: A. Viana: Problemas canónicos planteados por la Instrucción «Erga migrantes caritas Christi», 3.V.2004. (Commentary)

See below, canon 34.

IE XVII 1/05, 303-333: Pontificio Consiglio per i Testi Legislativi: Nota circa la validità dei matrimoni civili celebrati nel Kazakhstan nel periodo comunista, 13 maggio 2003 (con *nota* di M. A. Ortiz, *La validità del matrimonio civile celebrato da battezzati nella Chiesa ortodossa*). (Document and commentary)

See below, canon 1059.

J 65 (2005), 201-214: I. Žužek: Updated Edition of the *Index Analyticus Codicis Canonum Ecclesiarum Orientalium*.

The updated Index opens with an apology to make it clear that Fr. Žužek (RIP) is the author. There is now an English translation of the Code of the Canons of Eastern Churches. Additional terms and other minor amendments published in the *Orientalia Christiana Periodica* are given.

Proc CLSA 10/04, 13-25: R. J Flummerfelt: Theology of Marriage: Complementarity between the Latin and Eastern Codes. (Address at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

See below, canons 1055-1165.

RR 2005, 31-33: Apostolic Signatura: Local Latin Tribunal Competent to Hear Marriage Nullity Cases of Members of the Chaldean Church. (Document)

A marriage nullity case involving two members of Eastern Catholic Churches was presented to a Latin tribunal for adjudication. Both parties were willing to have their cases heard before that tribunal. One party was baptised in the Syriac Church and the other in the Chaldean Church. The marriage was celebrated according to the Chaldean rite in Iraq. The judicial vicar sought to direct the case to the tribunal of the Chaldean Church. He was informed that the eparchy did not have its own tribunal and that the local Latin tribunal was competent to hear cases of Chaldean subjects by virtue of a 1984 indult from the Apostolic Signatura. Since 1984, however, the eparchy had been split, and the judicial vicar sought a clarification and possible prorogation of competence from the Signatura. The text is given of the Signatura's reply, in which it confirms that the 1984 indult continues to apply, and adds a series of further observations.

RR 2005, 121-123: J. M. Huels: Ascription by Law in Church of Father. (Opinion)

A woman born in 1968 was baptised in a Latin parish because both her parents considered themselves to be members of the Latin rite. Her father's father, however, was a Greek Catholic. He married a Latin rite Catholic and had their son (the woman's father) baptised in the Latin rite and raised as a Latin Catholic. The woman always thought of herself as a practising Latin Catholic. H.'s opinion is that, if her father or grandfather had not received permission from the Holy See to transfer to the Latin rite, she is a Greek Catholic.

RR 2005, 123-125: R. J. Flummerfelt: Proper Church *Sui Iuris* of Petitioner and Competent Tribunal. (Opinion)

A woman whose father was a Ukrainian Catholic and whose mother was a Latin Catholic, and who was baptised in the Ukrainian Catholic Church *sui iuris* while her parents were only civilly married, actually belonged to the Latin

Church despite regarding herself as a Ukrainian Catholic. Canon 29 §2, 1° of the Code of Canons of the Eastern Churches indicates that a child born of an unwed mother (*a matre non nupta*) belongs to the Church *sui iuris* of the mother in virtue of baptism. Thus when the woman subsequently married a Presbyterian in a Ukrainian Catholic parish, the marriage was invalid on account of a defect of canonical form: neither the Latin Catholic woman nor the Presbyterian man were members of the Ukrainian Catholic *sui iuris*, and the priest lacked the faculty to bless their union. F. points out that in view of the foregoing, the petition for nullity could be dealt with using the documentary process; and there would be nothing to prohibit her from using the Latin diocesan tribunal provided one of the bases for competence had been met (CIC canon 1673; CCEO canon 1359).

SCL I (2005), 147-198: D. Salachas: Ecclesial Communion and the Exercise of Primacy in *Codex Canonum Ecclesiarum Orientalium*. (Article)

S. looks first at the general principles contained in each Code concerning the roles of primacy and episcopate. He then considers in some detail the exercise of the primacy of the Roman Pontiff in the governance of particular Churches, with special reference to: erection of eparchies; appointment of bishops; administration of ecclesiastical goods; loss of clerical state; status of religious; sacraments and sacramentals; the *diaspora*; penal law. He identifies a number of areas where he feels that less intervention would be beneficial.

Sebastian S. Karambai: Ministers and Ministries in the Local Church. (Book)

See below, canons 375-572.

BOOK I: GENERAL NORMS

3

FI 2 (2003), 147-157: R. Minnerath: The Experience of the Catholic Church in structuring its relationship with States in the 20th century. (Article)

See above, General Subjects.

13

RR 2005, 39-44: S. Oubre: Cruise Ship Passengers and Mass Attendance Obligation. (Opinion)

See below, canons 1246-1248.

29-34

IC XLV 90/05, 757-770: J. González Ayesta: La Instrucción *Dignitas Connubii* y las categorías normativas del Derecho vigente. (Commentary)

G. studies the juridical nature of the Instruction *Dignitas Connubii*. In his view it is a general norm containing a complete set of regulations on the matrimonial nullity process; it is binding, above all, on diocesan and interdiocesan tribunals; it has been issued by a dicastery of the Roman Curia (the Pontifical Council for Legislative Texts) which, though lacking legislative power, was acting in accordance with a pontifical mandate which amplified for this case its sphere of competence; and it was published with the approval *in forma communi* of the Pope himself. After a brief study of canons 29-34, G. considers that the document is closer in nature to a general executory decree (canons 31-33) than to an instruction as defined in canon 34.

34

IC XLV 89/05, 271-292: A. Viana: Problemas canónicos planteados por la Instrucción «Erga migrantes caritas Christi», 3.V.2004. (Commentary)

V. highlights some canonical problems raised by the Instruction *Erga migrantes caritas Christi*. This is the first time that a Pontifical Council has published an Instruction, that is, a general regulatory document, without either prior Papal delegation or subsequent approval *in forma specifica*. This poses some

questions as to its validity. It also introduces some doubts as to the canonical title by which the Pontifical Council for the Pastoral Care of Migrants and Itinerant People presents regulations which affect Eastern Catholics. Finally V. comments on the changes introduced by the Instruction regarding various *officia* and structures for the pastoral care of migrants.

34

Per XCIV 3/05, 417-476: G. P. Montini: L'istruzione *Dignitas Connubii* nella gerarchia delle fonti. (Presentation)

See below, canons 1671-1691.

34

QDE 18 (2005), 342-363: G. P. Montini: L'istruzione *Dignitas connubii* sui processi di nullità matrimoniale. Una introduzione. (Article)

See below, canons 1671-1691.

35-47

IE XVII 2/05, 385-415: J. Canosa: La funzione della giurisprudenza della Segnatura Apostolica nello sviluppo del Diritto amministrativo canonico. (Article)

The special commission constituted in November 1967 to study the internal arrangement to be given to the Code was aware that preparing the work on the regulation of administrative law involved very special difficulty. Indeed, hardly a year after the Code's promulgation, one of its main contributors admitted that, given the doubtful unity and fragmentary content of the published norms regarding administrative acts, their understanding and application would not be easy until doctrine and jurisprudence and, probably, opportune legislative reforms, had resolved the outstanding problems. In this context, C. expresses his contentment at developments in this area from 1967 onwards. He draws together a number of decisions of the Apostolic Signatura published in canon law journals from 1968 to 1982, and points out the steps taken by administrative law as a result. After 1983 the administrative-contentious cases, published occasionally in canon law reviews or in summary form in *L'Attività della Santa Sede*, diminish in number, but remain useful from the point of view of their substantive and procedural aspects. C. trusts that an official and complete publication of jurisprudence may be made available soon.

48-49

RR 2005, 44-46: R. Jenkins: Bishop's Executive Powers in Dealing with Past Acts of Abuse. (Opinion)

See below, canon 1395.

65

CLSN 142/05, 74-75: G. Read: Invalid Dispensation from Canonical Form. (Article)

See below, canon 1127.

85

CLSN 142/05, 74-75: G. Read: Invalid Dispensation from Canonical Form. (Article)

See below, canon 1127.

85-93

QDE 18 (2005), 259-277: F. Marini: Il precetto della Messa festiva: un obbligo individuale per un'assamblea che celebra la memoria pasquale. (Article)

See below, canons 1244-1248.

87

Per XCIV 1/05, 43-117: G. P. Montini: La prassi delle dispense da leggi processuali del Supremo Tribunale della Segnatura Apostolica (art. 124, n. 2, 2ª parte, Cost. Ap. Pastor Bonus). (Article)

After outlining the fundamental competence of the Apostolic Signatura, M. turns his attention to the more specific question of the Supreme Tribunal's practice of dispensing from procedural laws. In particular, he examines the practice of dealing with requests to dispense from the need for academic qualifications for judges and defenders of the bond, from the need to summon a respondent to a judicial process, from the necessity to have a judicial process at all, from the need to have two conforming sentences, and from the publication of the acts.

91-92

CLSN 142/05, 74-75: G. Read: Invalid Dispensation from Canonical Form. (Article)

See below, canon 1127.

96

Ang 82 (2005), 821-832: J. Śliwa: La partecipazione dei fedeli al banchetto eucaristico alla luce del Codice di Diritto Canonico. (Article)

See below, canons 912-923.

96

Per XCIV 4/05, 543-586: V. De Paolis: Chiesa di Cristo, Chiesa Cattolica, chiese particolari, comunità ecclesiali. (Article)

See below, canon 204.

107

SCL I (2005), 485-490: A. Mendonça: The Status of the Faithful Belonging to an Eastern Church *sui iuris* Personal Parish who Wish to be Members of the Local Latin Parish. (Article)

M. considers the question of a group who belong to an Eastern rite parish but prefer to worship in the local Latin rite parish. Attempts to encourage them to worship within their own tradition have not been successful and they are seeking the sacraments from the Latin parish. One approach might be to ask the Holy See for a transfer of rite. In some ways the most pastoral approach would be for the Latin rite priest to obtain permission or delegation for marriage from the Eastern rite parish priest, but in the broader picture it would be better to try to get them to respect their own traditions.

107

SCL I (2005), 491-496: A. Mendonça: Multiple Domicile/Quasi-Domicile and Membership in a Parish. (Article)

It is quite possible for people to have domicile or quasi-domicile in more than one parish. How does this affect eligibility for membership of a parish pastoral council or finance committee? It is up to the diocesan bishop to regulate

membership of these bodies. There is no prohibition on belonging to two parish councils simultaneously, but to prohibit this would not deprive anyone of a right, since no one has a right to be a member of such a body.

116-123

IE XVII 1/05, 293-302: Giovanni Paolo II: Lettera *Durante l'ultima cena* per il riconoscimento della personalità giuridica canonica pubblica a Caritas Internationalis, 16 settembre 2004 (con *nota* di J. Miñambres: *Status giuridico-canonico di Caritas Internationalis*). (Document and commentary)

See below, canons 312-320.

128

IC XLV 90/05, 557-608: J. Ferrer Ortiz: La responsabilidad civil de la Diócesis por los actos de sus clérigos. (Article)

The civil liability of the diocese for the behaviour of its clergy has become especially important in the last few years as a result of cases in the USA involving the sexual abuse of minors. F. looks at the general secular and canon law framework for the payment of damages, and considers that the diocese may have civil liability in sexual abuse cases if the offence was committed by a cleric taking advantage of his position, and if the diocese is found to have been at fault *in eligendo* and/or *in vigilando*. Concentrating mainly on the law in Spain, F. considers it to be fundamental, before applying State legislation, to understand the legal relationship between the diocese and its clergy, as this is not a labour contract. He pays particular attention to the most recent jurisprudence, not only on child sexual offences committed by priests, but also in general, and finds that in most cases there was found to be no vicarious liability, as guilt *in eligendo* and/or *in vigilando* was not established.

129

Per XCIV 1/05, 3-20: O. De Bertolis: Origine ed esercizio della potestà di governo in San Tommaso d'Aquino. (Article)

This article is a summary of De B.'s doctoral thesis. He considers the origin and exercise of the power of jurisdiction as found in the writings of St Thomas Aquinas. Eschewing the standard works of Thomists, he approaches the text of St Thomas itself. There he finds traces of an ecclesiology and perspectives on Christian life that are remarkably contemporary.

144

SCL I (2005), 447-462: Defect of Canonical Form: Decision *coram* Monier, 23 November 2000 (USA). (Sentence)

See below, canon 1108.

150-151

J 65 (2005), 31-54: Elissa Rinere: The Exercise of *Cura Animarum* through the Twentieth Century and Beyond. (Article)

See below, canon 230.

185

AkK 173 1/04, 7-41: G. May: Der Ruhestand des Pfarrers. (Article)

See below, canon 538.

195

Proc CLSA 10/04, 93-113 (also **CLSN 142/05, 43-61**)**: J. I. Donlon: Remuneration, Decent Support and Clerics Removed from the Ministry of the Church.** (Seminar paper at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

See below, canon 281.

199

ETL 81 4/05, 435-467: J.-P. Schouppe: Les circonscriptions ecclésiastiques ou communautés hiérarchiques de l'Église catholique. (Article)

The phrase *circumscriptiones ecclesiasticae* is found in the Latin text of canon 199 4º. It is also used in the *Annuario Pontificio*. This article is a theoretical study of its use and of its relationship to another canonical phrase, namely "hierarchical community". S. also analyses the relationship of both territorial and personal jurisdictions as found in the two Codes, Latin and Oriental.

BOOK II, PART I: CHRIST'S FAITHFUL

204

Per XCIV 4/05, 543-586: V. De Paolis: Chiesa di Cristo, Chiesa Cattolica, chiese particolari, comunità ecclesiali. (Article)

The Church of Christ, the Catholic Church, particular Churches, and ecclesial communities are all expressions that occur in current theological debate and in canonical doctrine. In this article, De P. considers the meaning of these terms, and how they relate to one another. He traces the doctrine from Vatican I, through the Papal Magisterium to Vatican II and subsequent doctrinal clarifications to the 1983 Code. In canons 96 and 204, he finds a clear identification between the Church of Christ and the Catholic Church.

206

IE XVII 2/05, 441-461: M. Madonna: Lo statuto giuridico del catecumeno tra diritto universale e legislazione particolare. (Article)

M. seeks the juridical basis of the special relationship of catechumens with the Church. He first studies the references to catechumens in the 1917 Code and in later legislation which provided more precise juridical expressions of their duties and prerogatives. Commentators on the 1983 Code differ in their interpretations, some totally denying catechumens any juridical subjectivity, some claiming they have "secondary" subjectivity, and some asserting that all the non-baptised, including catechumens, are "persons in the Church", even though the concept of *christifidelis* is reserved to those who are baptised. Bearing in mind canon 788 §3 on the responsibility of bishops' conferences to establish norms on this matter, M. studies the great variety of decisions emanating from the various conferences around the world. He gives particular attention to the legislation from the Italian Episcopal Conference, and having expressed a certain disappointment that it does not have greater juridical content, he ends by putting forward a number of practical suggestions.

208

ELJ VIII 37 7/05, 173-185: Lord Bingham of Cornhill: 'Endowed by their Creator?' (Lecture)

An edited text of the Warburton Lecture delivered by B., Britain's Senior Lord of Appeal in Ordinary, in 2003. B. puts forward the theory that mainstream religion has little more than an indirect concern with the fundamental nature of

human rights. Scripture provides no basis for any systematic code, albeit it espouses the virtues of equality, non-discrimination, and respect for others. There remains within religious organisations an uncritical respect for authority and repeated emphasis on the dominance of the male. Rather, the articulation of human rights as a coherent and justiciable entity was the product of political turmoil, rebellion and war. That the expression of such rights is consistent with Christian teaching, however, is to be welcomed and valued.

208

FI 2 (2003), 77-93: J. M. Díaz Moreno: La mujer en la ley de la Iglesia. (Article)

After some preliminary remarks in which D. criticises what he sees as discrimination against women in the Church, he speaks of the need to correct some "patent deficiencies" in the ecclesial status of women. The past, he says, is gloomy, but there are signs of hope in the 1983 Code, which offers a number of possibilities to women to exercise certain offices and tasks, although he feels there is still progress to be made.

208-231

SCL I (2005), 25-48: F. Morrisey: The Rights and Duties of the Faithful according to the Code of Canon Law. (Article)

The section on the rights and duties of the faithful was a new feature of the 1983 Code. As yet not all its implications have been explored, and in some areas experience has found it wanting. M. outlines the background, and then looks in more detail at several of the canons – the right of association, the right to reputation and privacy, the right to vindicate one's rights before the appropriate forum, and the obligations to preserve communion and to carry out apostolate. Looking forward he hopes to see greater respect in the Church's procedures for the demands of natural justice, and especially for the establishment of suitable conciliation and mediation procedures.

214

IC XLV 89/05, 89-142: G. Kuminetz: La forma de la celebración del matrimonio desde la comparación entre ordenamientos. (Conference presentation)

See below, canons 1108-1109.

215

IE XVII 1/05, 75-100: L. Navarro: Diritto e volontà di associazione dei fedeli. (Conference presentation)

In his presentation at the study convention held in Venice on 18-19 June 2003, N. explains how canon 215 contains a "formalisation" of the right of association of the faithful. He highlights what he considers to be the main contribution of the Latin legislation to this right: the role attributed to the will of the faithful in such associations. From this starting point it is possible to discover that, contrary to what might at first appear to be the case, the will of the faithful also plays a fundamental role in associations of a public nature. N. therefore studies the associative will under the 1917 Code, before going on to consider the relevance of the Council with regard to a re-evaluation of this role of the will. In the context of the 1983 Code, he studies four particular aspects of the will of the faithful – the constitution of the association, its government, its extinction, and the admission and rejection of members – as well as certain juridical acts which to a large extent depend on the ecclesiastical authority. Before a brief conclusion, N. deals with the transformation of private into public associations, and vice versa.

218

IE XVII 2/05, 417-440: Laura de Gregorio: Il diritto alla difesa dell'autore nel procedimento per l'esame delle dottrine. (Article)

See below, canon 221.

220

IC XLV 90/05, 529-555: J. Otaduy: La Iglesia católica ante la Ley española de Protección de Datos. (Article)

See below, canons 486-490.

220

QDE 18 (2005), 417-441: A. Perlasca: La tutela del diritto all'intimità negli esami psicologici dei candidati al seminario e agli Ordini sacri. (Article)

P. looks at the question of psychological testing, both for the admission procedure for seminaries and as part of the formation of candidates for ordination. He first makes clear that psychology is not an alternative to spiritual direction, nor a means of discerning a vocation, but has a role to play in the

"human" formation of the candidate (which embraces much more than merely the suitability of the candidate to observe the obligation of celibacy). He then looks at the teaching of the Magisterium on the use of psychology. There has never been a rejection by the Magisterium of psychological testing, but rather a concern to avoid the moral and juridical problems associated with certain psychoanalytical techniques. In particular it is not lawful to intrude on the intimacy of a person – that part of the person's interior world which he would reveal in confidence only to a very limited number of people – without his consent. Psychology has an essentially "complementary" role in relation to the delicate task of vocational discernment. Turning to the 1983 Code, P. points out that there is no canon requiring a psychological test as an absolute necessity. He argues that, just as canon 642 makes psychological testing of candidates to the novitiate subject to the right to privacy in canon 220, so by analogy canons 241 (admission to the seminary) and 1029 (admission to orders) are also to be treated as subject to canon 220. P. then looks at when, and in what ways, use should be made of psychology, and what the reaction of a superior should be when a test is refused. He also goes more deeply into the meaning of the "consent" which the candidate needs to give to being tested, and the notions of "intimacy" and "private life", before offering some considerations on the choice of psychologist, and the use that can be made of the results of the test.

220

RR 2005, 7-9: Congregation for the Clergy: Diocesan Bishops can Obligate Priests to Submit to Background Checks by Civil Authorities. (Document)

In answer to a question received, the Congregation for the Clergy stated that there is nothing in the Code of Canon Law to prevent a diocesan bishop from obliging priests to submit to the same background checks as are required for full- or part-time lay personnel or volunteers in diocesan institutions who are in frequent contact with minors, under similar circumstances. However, there is also a duty to ensure that the information gained from the background check cannot be used or retained so as to harm unlawfully the good reputation of those being examined or violate the individual's right to protect his or her privacy. This means that a priest cannot be obliged by a diocesan child protection officer to submit his fingerprints and photograph to a national criminal records bureau.

220

RR 2005, 46-48: A. J. Espelage: Background Checks of Diocesan/Eparchial Personnel. (Opinion)

E. addresses the issue of whether an ecclesiastical authority's insistence on the need for background checks constitutes a violation of a person's right to privacy under canon 220. It is not always an easy question to answer, but there are some basic principles to bear in mind. No one can force another to let one's personal privacy be analysed; but on the other hand, if one chooses not to give the appropriate permission, then the other party is not obliged to engage the person in public activity representing the Church.

221

IE XVII 2/05, 417-440: Laura de Gregorio: Il diritto alla difesa dell'autore nel procedimento per l'esame delle dottrine. (Article)

As the natural path for the vindication and defence of the rights of Christ's faithful, the process is to be seen as a suitable means towards achieving the Church's supreme goal: that of the *salus animarum.* In this context G. studies the author's right of defence in the procedure for the examination before the Congregation for the Doctrine of the Faith. The 1988 Apostolic Constitution *Pastor Bonus*, adopting terms similar to those contained in the Apostolic Constitution *Regimini Ecclesiae Universae* (1967) and the *motu proprio Integrae Servandae* (1965), confirms several aspects of this right. Nevertheless, authors who have taken part in this procedure have expressed certain criticisms of it. G. studies in detail the rules for the examination of doctrines, currently contained in the Congregation's *Agendi ratio in doctrinarum examine* of 29 June 1997, and evaluates the various criticisms made.

223

RR 2005, 49-53: J. M. Ritty: Balancing Rights of Accused Cleric and the Good of the Community. (Opinion)

See below, canon 1722.

225

For XVI/05, 24-28: Pope John Paul II: Family apostolate is a gift and grace for priests. (Address)

The Pope addresses a group of the clergy of Rome on the importance of putting family life at the centre of their ministry.

225

For XVI/05, 198-203: A. Rodríguez Luño: Catholics have a duty to build the social order. (Article)

R. considers the issues involved in recognising the laicity of the State and the rights of conscience. For the Christian the value of the person transcends politics, but politics and morality are not separable.

225

Per XCIV 2/05, 173-209: C. Tammaro: Profili storico-giuridici del ruolo attivo dei fedeli laici nella Chiesa. (Article)

The presentation of the Church in Vatican II as the People of God has, in T.'s view, helped to bring out the fact that the condition of being "Christian faithful" lies at the foundation of belonging to the Church. He traces the concepts that underlay the discipline governing the lay faithful in the 1917 Code and how they were challenged at the Vatican Council. The 1983 Code enshrines some of the insights of the Council and it is clear to T. that the lay faithful are no longer required to be the passive recipients of the ministerial activity of the clergy, but are called to be active agents in the life and mission of the Church.

228-230

FI 2 (2003), 77-93: J. M. Díaz Moreno: La mujer en la ley de la Iglesia. (Article)

See above, canon 208.

230

J 65 (2005), 31-54: Elissa Rinere: The Exercise of *Cura Animarum* through the Twentieth Century and Beyond. (Article)

R. points to the importance of societies negotiating between stability and change, and considers that the involvement of the laity in ministerial activities is running ahead of any theological or canonical foundations. She reviews the *cura animarum* in the 1917 Code, Vatican II, and the 1983 Code which is ambivalent on lay ministry. In 1977-1978 Roman dicasteries were concerned with developments which blurred the lines between the priesthood of the ordained and the priesthood of the laity.

241

QDE 18 (2005), 417-441: A. Perlasca: La tutela del diritto all'intimità negli esami psicologici dei candidati al seminario e agli Ordini sacri. (Article)

See above, canon 220.

265-272

IC XLV 90/05, 487-528: O. Condorelli: Ejercicio del ministerio y vínculo jerárquico en la historia del Derecho de la Iglesia. (Conference presentation)

See above, Historical Subjects (*First millennium*).

265-272

IC XLV 90/05, 557-608: J. Ferrer Ortiz: La responsabilidad civil de la Diócesis por los actos de sus clérigos. (Article)

See above, canon 128.

271

IC XLV 89/05, 271-292: A. Viana: Problemas canónicos planteados por la Instrucción «Erga migrantes caritas Christi», 3.V.2004. (Commentary)

See above, canon 34.

273-289

RfR 64 2/05, 135-151: J. F. Keenan: Framing the Ethical Rights of Priests. (Article)

K. develops the question of the rights of priests in the strictly canonical sense to include ethical ones which he describes as: "the right of priests to share respectfully in the episcopal ministry of the local ordinary, the right of association, the right to exercise their ministry and the right to fair treatment." He makes reference to the Code and to Vatican II documents and other sources in this article which attempts to promote an understanding of the place of the priest in the communion of the Church.

281

AkK 173 1/04, 7-41: G. May: Der Ruhestand des Pfarrers. (Article)

See below, canon 538.

281

Proc CLSA 10/04, 93-113 (also **CLSN 142/05, 43-61**)**: J. I. Donlon: Remuneration, Decent Support and Clerics Removed from the Ministry of the Church.** (Seminar paper at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

D. looks at the support given to clerics removed from ministry because of sexual abuse of children, covering financial support, housing, and medical provision. He gives a number of scenarios to illustrate and explain.

281

RR 2005, 53-56: B. Daly: Equalization of Priests' Salaries. (Opinion)

D. considers that an equalised salary system whereby all priests in the diocese are paid the same, regardless of where they live and of whether they are assistant priests, pastors, administrators or retired (with any extra money they receive from talks, retreats, etc., being paid into the Clergy Trust Fund), would not be in conformity with the law of the Church.

284

RR 2005, 56-57: J. I. Donlon: Permanent Deacons Wearing Clerical Attire while Ministering. (Opinion)

See below, canon 288.

285

RR 2005, 94-95: P. L. Golden: Appeal of a Decision of a Roman Dicastery to the Apostolic Signatura. (Opinion)

See below, canon 1445.

288

RR 2005, 56-57: J. I. Donlon: Permanent Deacons Wearing Clerical Attire while Ministering. (Opinion)

Although the 1983 Code exempts permanent deacons from the obligation of wearing clerical attire, it does not forbid them from wearing it. It is within the competence of the local bishop to establish norms.

290

RR 2005, 10: Congregation for the Clergy: Change of Competence in Laicization Cases. (Document)

In a letter to the President of the United States Conference of Catholic Bishops, the Congregation for the Clergy confirmed that competence for dispensing from priestly obligations for presbyters and deacons, in non-penal cases, passed from the Congregation for Divine Worship to the Congregation for the Clergy with effect from 1 August 2005.

290

RR 2005, 89-91: W. H. Woestman: Dismissal from the Clerical State for the Sexual Abuse of a Minor. (Opinion)

See below, canon 1395.

290-291

Per XCIV 4/05, 647-680: E. Lohse: The origin and nature of the suspension *ad cautelam* of article 4 of the 1980 *Normae procedurales* for dispensations from celibacy – part 1. (Article)

Although dispensations from the obligation of celibacy had existed for centuries, no clear process for this dispensation was in place until the norms issued by the Congregation for the Doctrine of the Faith on 14 October 1980. L. considers one particular aspect of these norms, namely the suspension of the petitioner *ad cautelam*. In this first part of the article, he traces the history of the procedure and its antecedents, beginning in the centuries prior to the 1917 Code right up to the situation that prevailed before Vatican II.

294-297

Ap LXXVI 3-4 (2003), 727-747: C. Tammaro: Animadversiones quaedam de circumscriptionibus non territorialibus in disciplina iuridica vigenti. (Article)

T. offers some canonical reflections on personal hierarchical structures found in the Catholic Church. Based on the common norms of the 1983 Code and on the Apostolic Constitution *Pastor Bonus*, T. outlines the theological and juridical characteristics of personal circumscriptions. He gives some detailed consideration of: personal dioceses; military ordinariates; personal prelatures; Latin Ordinaries for Oriental Christians; personal apostolic administrations.

294-297

IC XLV 90/05, 667-691: C. Tammaro: Riflessioni sul senso e l'ambito di applicazione del can. 294 CIC. Un'analisi logica e teleologica della norma. (Article)

This article fits into the doctrinal debate on the role of lay people in personal prelatures, and focuses on the meaning and scope of canon 294 of the 1983 Code, which governs the internal structure of the prelature. The canon is analysed both logically and teleologically, that is, with the desire of avoiding any legal positivism and therefore any abstract consideration of the letter of the law as such. Instead T. considers the wording of the canon in the light of the specific purposes for which the legislator introduced the institution of the personal prelature. In so doing he presupposes the logical coherence and harmony of the whole canon law order, avoiding postulating that the legislator might have produced a conflict by, on the one hand, creating a structure such as the personal prelature, of which lay people undoubtedly form a constitutive part,

and on the other, denying to the laity, at the general legislative level (i.e. the Code), the juridical function of the "people" of the prelature. T. develops the concepts of "immediate" and "mediate" modes of belonging to an ecclesiastical circumscription, comparing primary and secondary organisational structures, and examining the specific nature and theological-legislative consequences of the laity's membership of personal prelatures, with reference to the different types of non-territorial jurisdiction.

312-320

IE XVII 1/05, 293-302: Giovanni Paolo II: Lettera *Durante l'ultima cena* per il riconoscimento della personalità giuridica canonica pubblica a Caritas Internationalis, 16 settembre 2004 (con *nota* di J. Miñambres: *Status giuridico-canonico di Caritas Internationalis*). (Document and commentary)

Caritas Internationalis has its origin in the last decades of the nineteenth century. In 1928 the organisation *Caritas Catholica* obtained from the Secretary of State a first recognition of its statutes and structure. In 1958 it became *Caritas Internationalis* and in 1976 it acquired civil juridical personality in the Vatican City State. In this document John Paul II grants *Caritas Internationalis* public juridical personality under canons 116-123. In his commentary M. gives a very brief historical background and explains "confederation" – the juridical figure supporting the existing charitable civil entity. This includes two aspects: the *transformation* of the juridical subject, and certain consequences of the new juridical person's *public nature,* namely: its internal organisation, under canons 317 §1 and 318 §2; its subjective composition as established in canon 316 §1; the control of the entity's activity in accordance with canon 318 §1; and the administration of its temporal goods as governed by canons 1257 and 1273-1289.

BOOK II, PART II: THE HIERARCHICAL CONSTITUTION OF THE CHURCH

331

IE XVII 2/05, 545-564: Giovanni Paolo II: Discorso alla Rota Romana, 29 gennaio 2005 (con *nota* di J. Llobell, *Sulla valenza giuridica dei Discorsi del Romano Pontefice al Tribunale Apostolico della Rota Romana*). (Document and commentary)

This is the text of Pope John Paul II's 2005 address to the Auditors of the Roman Rota. It is followed by a commentary, on the occasion both of this event and of the publication by the *Libreria Editrice Vaticana* of a collection of Papal addresses to the Rota from 1939 to 2003, compiled by Mgr Grzegorz Erlebach. In his commentary, L. provides a detailed analysis of the juridical nature of these addresses.

342-348

ACR LXXXII 4/05, 504-505: H. Delaney: The Canonical Significance of the Synod of Bishops of 1994 on Consecrated Life. (Review Article)

D. reviews this work by J. M. Kallidukil (Peter Lang, Frankfurt am Main, 2003, 330pp.), which is based on K.'s doctoral dissertation, and is no. 26 of the German series *Adnotationes in Ius Canonicum.* The work covers both the institution of the synod of bishops, especially the 1994 synod, and wide-ranging issues in consecrated life.

362-367

FI 3 (2004), 129-138: A. F. Dziuba: Relacje Zakonu Maltańskiego ze Stolicą Apostolską (The Order of Malta's Relationship with the Holy See). (Article)

See above, General Subjects.

368

ETL 81 4/05, 435-467: J.-P. Schouppe: Les circonscriptions ecclésiastiques ou communautés hiérarchiques de l'Église catholique. (Article)

See above, canon 199.

374

Ap LXXVI 3-4 (2003), 749-780: M. Segù Girona: A "Ecclesiae Imago", alguns textos conciliares e as figuras de paróquia conciliares correlacionadas com as de diocese e de Vicariatos forâneos, e o Código de direito Canônico de 1983. (Article)

After an introduction to the topic, G. gives a historical survey of the division of a diocese into parishes and then of their grouping into deaneries under a dean. He provides an overview of the parish as a community of the faithful: a specific community that is within the organisation of a particular Church cared for by the bishop with its proper pastor as parish priest.

375-572

Sebastian S. Karambai: Ministers and Ministries in the Local Church. (Book)

The 1983 Latin Code and the 1990 Eastern Code do not contain all the laws concerning the exercise of sacred power and the administration of the sacraments. For instance, liturgical laws for the most part are not found in the Codes. Likewise the Codes obviously do not contain the innumerable instructions and directives on pastors and ministries issued by the Apostolic See from time to time. There are also several complementary legislations promulgated by the episcopal bodies. K. aims in this book to present the important magisterial teachings and the essential, updated norms concerning the ministries of teaching and sanctifying, as well as the ministers who serve in the local Church, with particular reference to the Latin Church in India. The book consists of two parts. Part I, containing six chapters, deals with the ministers – both persons and bodies – serving at the diocesan and parish levels. Part II, containing nine chapters, deals with the ministries of teaching and sanctifying (sacraments and sacramentals). The last section of most of the chapters offers short answers to a selection of questions. (For bibliographical details see below, Books Received.)

381

RR 2005, 49-53: J. M. Ritty: Balancing Rights of Accused Cleric and the Good of the Community. (Opinion)

See below, canon 1722.

384

Proc CLSA 10/04, 93-113 (also **CLSN 142/05, 43-61**)**: J. I. Donlon: Remuneration, Decent Support and Clerics Removed from the Ministry of the Church.** (Seminar paper at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

See above, canon 281.

393

IC XLV 90/05, 557-608: J. Ferrer Ortiz: La responsabilidad civil de la Diócesis por los actos de sus clérigos. (Article)

See above, canon 128.

460-468

Ap LXXVI 3-4 (2003), 805-826: J. J. Carlos Orsi: O sínodo diocesano. (Article)

O. reviews the history and processes of the diocesan synod.

486-490

IC XLV 90/05, 529-555: J. Otaduy: La Iglesia católica ante la Ley española de Protección de Datos. (Article)

O. deals with some of the issues arising for the Church as a result of the 1999 Spanish Law on Data Protection.

515-552

QDE 18 (2005), 299-312: P. Pavanello: La parrocchia: prospettive canonistiche innovative. (Communication)

In this communication to the 52nd Assembly of the Italian Episcopal Conference in 2003, P. highlights the importance of the proper use of juridical norms and structures for ensuring the pastoral effectiveness of the parish. A major innovation of the 1983 Code was its definition of the parish as a "community of Christ's faithful" (canon 515): the parish is the place in which the communion of the faithful is made visible and specific, especially in the Eucharistic celebration. P. discusses ways in which parishes could develop in the future, outlining various possible arrangements of "parish unit" involving

more than one parish, and forms of collaboration between the parish priest and other priests and lay people. In individual particular Churches suitable norms will be needed at the local level, in order to guide the parish through the process of transformation demanded by modern pastoral challenges.

517

Proc CLSA 10/04, 207-241: Gary D. Yanus / Therese Guerin Sullivan: Sacramental Life of Parishes without a Resident Pastor. (Two seminar papers at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

Y. and S. look at the roles of the priest supervisor and the parish coordinator.

517

RR 2005, 57-59: P. Cogan: The *Missa pro Populo* and the Priest Moderator of Canon 517. (Opinion)

C. considers that the priest moderator of canon 517 §2 does not have an obligation to celebrate the *Missa pro populo* for the priestless parish.

518

SCL I (2005), 485-490: A. Mendonça: The Status of the Faithful Belonging to an Eastern Church *sui iuris* Personal Parish who Wish to be Members of the Local Latin Parish. (Article)

See above, canon 107.

520

For XVI/05, 111-159: A. Mendonça: Entrusting of a Parish to a Religious Institute and Appointment of a Religious Priest as Parish Priest. (Article)

M. studies a number of questions arising from the linked issues of entrusting a parish to a religious institute, and the appointment of a religious as parish priest: the notion of "parish"; the authority competent to erect a parish; the formalities involved in entrusting a parish to a religious institute; the appointment of a religious priest as pastor; and the rights and obligations of a religious priest who is pastor. In particular he examines in some depth the question of having an individual rather than a juridical person as parish priest. In two appendices he provides sample agreements produced by the Vicariate of Rome.

523

For XVI/05, 111-159: A. Mendonça: Entrusting of a Parish to a Religious Institute and Appointment of a Religious Priest as Parish Priest. (Article)

See above, canon 520.

536

AkK 173 1/04, 119-145: M. Conrad: Vorgängergremien des Pfarrgemeinderates in Deutschland. (Article)

See above, Historical Subjects (*1917 Code*).

538

AkK 173 1/04, 7-41: G. May: Der Ruhestand des Pfarrers. (Article)

M. deals with the regulations concerning the retirement of priests in the German context. The article is divided into four main parts, preceded by an introduction in which M. looks at the notion of retirement, and how this is dealt with by particular law in various dioceses. In the first part of the article he considers the topic in connection with civil laws. The second part is about the preparation for retirement and the practices in different dioceses. The third part concerns the care of retired priests, where M. deals in detail with their maintenance, remuneration, social help, salary, the title of *emeritus*, etc. In the fourth and final part M.'s concern is about the establishment and engagement of retired priests. Although the priestly ministry is ended by retirement, priests can continue their service till death.

553-555

SCL I (2005), 269-314: V. D'Souza: The Office of Vicar Forane: Fidelity in Newness and Newness in Fidelity. (Article)

D'S. looks at the historical origin of the office of vicar forane or dean, and the revision of the Code on this topic, before discussing the role of such a territorial pastoral division. He then looks in some detail at the selection of vicars forane and their rights and obligations.

564

IC XLV 89/05, 271-292: A. Viana: Problemas canónicos planteados por la Instrucción «Erga migrantes caritas Christi», 3.V.2004. (Commentary)

See above, canon 34.

564

TPQ 153 (2005), 82-87: H. Kalb / S. Lederhilger: Römische Erlässe. (Documents)

See above, General Subjects.

BOOK II, PART III: INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE

573

Ap LXXVI 3-4 (2003), 633-682: D. A. Gutiérrez: Consideraciones sobre teología del derecho canónico codificado. (Article)

See above, General Subjects.

573

VC XLI 3/05, 243-265: P. G. Cabra: Il rinnovamento della vita consacrata. 5. Anni Novanta. (Article)

The 1990s were years of great change in the world. In the midst of that change two authoritative documents were issued concerning the challenge of the contemporary world to consecrated life: *Fraternal Life in Community*, issued by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life in 1994, and *Vita Consecrata*, the Apostolic Exhortation issued by Pope John Paul II in 1996, following the Synod of Bishops of 1994. In this article, C. considers a variety of themes arising from the confrontation between the contemporary world and consecrated life, and examines the way forward presented by the two documents.

573

VC XLI 3/05, 266-284: S. Bisignano: La vita consacrata nel magistero di Giovanni Paolo II. (Article)

This is a brief synthesis of the many contributions made by Pope John Paul II to an understanding of consecrated life. B. reflects on six major themes, illustrating them with almost five full pages of end-notes referring to the audiences, sermons, messages and documents in which Pope John Paul considered consecrated life.

573

VC XLI 6/05, 578-593: P. G. Cabra: Il rinnovamento della vita consacrata. 6. Alcune domande pensando al futuro. (Article)

This article concludes the series in which C. examined the renewal of consecrated life since the period prior to Vatican II. He looks to the future by means of a series of questions. He has no doubt that consecrated life has a future in the Church; that future will depend on how those currently living it prepare today.

573

VR 98 6/05, 4-20: A. Bocos Merino: Memoria de Juan Pablo II: merecida gratitud. (Article)

B. reflects on Pope John Paul II's contribution to consecrated life. Canons 573 and 607 describe the theological, canonical and spiritual elements of consecrated life, and John Paul II commented on each one of these aspects, drawing out their charismatic, theocentric, liturgical, ecclesial, apostolic and eschatological implications. B. highlights 16 different areas of interest in the Pope's teaching on consecrated life.

579

SCL I (2005), 49-94: V. D'Souza: Erection of a Religious Institute of Diocesan Right: Law and Praxis. (Article)

D'S. begins with a historical perspective on how religious orders come into being and obtain approval. He distinguishes between the charism of the founder and the charism of the foundation. He then explores the gradual movement from association to erection as an institute, and describes the liaison necessary with the Holy See. Two appendices contain guidelines and directives from the Congregation, and list the documentation required.

582

RfR 63 2/04, 204-210: E. McDonough: Mergers, Unions, Federations and Confederations. (Article)

McD. discusses the present practice of the Holy See.

582

RR 2005, 11-13: Congregation for Institutes of Consecrated Life and Societies of Apostolic Life: Erection of a Federation of Religious Institutes and Provinces. (Documents)

Letter and decree from the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, establishing a federation of a number of religious institutes and provinces in order to facilitate mutual aid and coordination between them.

586

QDE 18 (2005), 393-416: M. Mosconi: L'ordinario del luogo e la correzione penale del religioso (can. 1320). (Article)

See below, canons 1319-1320.

586

RfR 64 4/05, 429-435: E. McDonough: Canonical Federation. (Article)

McD. addresses the question of canonical federation and gives some suggestions for Statutes.

589

Per XCIV 4/05, 621-646: G. Ghirlanda: Iter per l'approvazione degli istituti di vita consacrata a livello diocesano e pontificio e delle nuove forme di vita consacrata. (Article)

Canon 589 defines institutes of consecrated life as of pontifical right or diocesan right, depending on the authority that established the institute. G. outlines the path to be followed for the approval of institutes at both levels. Towards the latter half of the article, he focuses attention on some new forms of consecrated life, in particular, new monastic communities.

590

J 65 (2005), 55-97: Nancy Bauer: Three Perspectives on Obedience: Benedict of Nursia, Ignatius of Loyola, and the 1983 Code of Canon Law. (Article)

See below, canon 601.

591

QDE 18 (2005), 393-416: M. Mosconi: L'ordinario del luogo e la correzione penale del religioso (can. 1320). (Article)

See below, canons 1319-1320.

601

J 65 (2005), 55-97: Nancy Bauer: Three Perspectives on Obedience: Benedict of Nursia, Ignatius of Loyola, and the 1983 Code of Canon Law. (Article)

This article arises from a controversy. Sister Joan Chittister was forbidden by her superiors to participate in an international conference on women's ordination. The prioress based her decision on the Benedictine and monastic tradition of obedience. B. notes that the Ignatian system differs from the Benedictine. Some of the differences arise from apostolic rather than monastic factors. In the Jesuits there are three levels, execution, willing, and understanding: perfect obedience requires all three. Jesuits also vow obedience to the Pope.

603-604

HPR 3/05: 42-45: L. Matulich: Consecrated life – the right fit. (Article)

M. reviews the various categories of consecrated life, with special emphasis on hermits and consecrated virgins. The author also identifies the private vow of perpetual chastity and the order of widows and widowers as further forms of commitment and as alternatives for those people who do not "fit" in the canonical institutes or states.

607

VR 98 6/05, 4-20: A. Bocos Merino: Memoria de Juan Pablo II: merecida gratitud. (Article)

See above, canon 573.

621

Per XCIV 2/05, 211-242: Y. Sugawara: Il governo provinciale di un istituto religioso centralizzato. (Article)

A province is defined in canon 621 as the union of several houses of a religious institute established by lawful authority under the same superior. It is a phenomenon found in many religious institutes. S. considers some of the issues this form of government raises in a centralised religious institute. There is need to strike a balance between the harmonising centralised government and the legitimate pluralism of government within a province. Sufficient freedom must be given to the province to govern effectively. The article has an appendix of six pages of references to canons that contain indications of which superiors are competent in certain sets of circumstances.

628

SCL I (2005), 475-484: Sharon Holland: Apostolic Visitation of Religious: Why and How? (Article)

H. indicates some of the reasons why the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life may order the extraordinary measure of an apostolic visitation. She then outlines how such a visitation should be carried out, and the nature of the report the Holy See expects.

631-633

RfR 63 2/04, 169-181: P. S. Moffett: Viewing Chapters as "Authoring" our Congregations' Narratives. (Article)

A method of conducting a Chapter in a religious congregation.

638

RR 2005, 13-15: Congregation for Institutes of Consecrated Life and Societies of Apostolic Life: Amount Defined by the Apostolic See for Alienations and Transactions that Jeopardize the Patrimonial Condition of a Religious Institute or Society of Apostolic Life. (Document)

The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life approved, for the United States, a maximum new sum of US $5 million for alienations and transactions which can worsen the patrimonial condition of a religious institute or society of apostolic life (cf. canon 638 §3).

642

QDE 18 (2005), 417-441: A. Perlasca: La tutela del diritto all'intimità negli esami psicologici dei candidati al seminario e agli Ordini sacri. (Article)

See above, canon 220.

643

RR 2005, 59-60: Eileen C. Jaramillo: Married Couple Entering into Religious Life. (Opinion)

E. offers some advice in the case of a husband and wife who, once their children had grown up, wished to enter religious life.

662-672

Proc CLSA 10/04, 171-193: E. A. Rinere / A. J. Espelage: The Disruptive Religious. (Two seminar papers at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

R. and E. look at conflicts between individual religious and their communities and the various rights and obligations involved. They give several examples.

665

RR 2005, 60-61: J. Jukes: Religious Changing Congregation. (Opinion)

In the case of a religious changing from one religious community to another and undergoing the period of probation required by canon 684 §2, the requirement in canon 665 §1 that religious "are to live in their own religious house" would be suspended during the time of probation.

667

RfR 63 1/04, 91-98: E. McDonough: Papal Enclosure. (Article)

This article deals with Parts III and IV of *Verbi Sponsa*. The essay analyses its norms and correlates this latest Instruction on Papal enclosure with the unique internal reality of the cloistered contemplative life.

667

RR 2005, 15-18: Congregation for Institutes of Consecrated Life and Societies of Apostolic Life: Relocation of a Community of Nuns and Observance of Papal Cloister. (Documents)

The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life approved a request for permission to relocate a community of cloistered nuns: the text is given of the letters from the major superiors of the two religious institutes involved and of a supporting letter from the diocesan bishop, together with the Congregation's reply.

667

RR 2005, 61-63: Victoria Vondenberger: Right to Cloister within Religious House. (Opinion)

V. suggests some solutions in a case where the charism of hospitality seems to conflict with the right of privacy within a religious community.

671-672

RR 2005, 63-64: Lynn McKenzie: Religious Signing Civil Contracts. (Opinion)

McK. discusses the question of a religious sister signing a contract as administrator of a parish school and the permission required from her superior.

678

QDE 18 (2005), 393-416: M. Mosconi: L'ordinario del luogo e la correzione penale del religioso (can. 1320). (Article)

See below, canons 1319-1320.

679

RR 2005, 64-67: A. Espelage: Expulsion of Accused Religious from Diocese by Bishop. (Opinion)

E. sets out the considerations that arise when a bishop wishes an accused religious to leave the diocese.

681

RR 2005, 67-69: F. Morrisey: Agreement between Diocesan Bishop and Religious Institute. (Opinion)

M. provides a list of points to be considered in drawing up an agreement between a diocesan bishop and a religious institute of women whom the bishop has invited into the diocese to assume direction of a school for girls and to assist in certain pastoral activities.

682

For XVI/05, 111-159: A. Mendonça: Entrusting of a Parish to a Religious Institute and Appointment of a Religious Priest as Parish Priest. (Article)

See above, canon 520.

684

RR 2005, 60-61: J. Jukes: Religious Changing Congregation. (Opinion)

See above, canon 665.

684

RR 2005, 69-71: T. C. Anslow: "Pre-Probationary" Period for Transfer between Institutes. (Opinion)

A religious sister wishing to transfer from congregation A to congregation B was invited by congregation B to live with them for a period of time before deciding if the formal transfer process would be advisable. However congregation A did not consent to this idea. Here the canonical implications of this "pre-probationary" period proposed by congregation B are examined.

691-692

RR 2005, 18-19: Congregation for Institutes of Consecrated Life and Societies of Apostolic Life: Definitive Departure from a *Sui Iuris* Monastery. (Document)

See below, canon 702.

702

RR 2005, 18-19: Congregation for Institutes of Consecrated Life and Societies of Apostolic Life: Definitive Departure from a *Sui Iuris* Monastery. (Document)

The text is given of a letter granting an indult of departure from a *sui iuris* monastery of pontifical right. The indult included a reminder that the nun for whom the indult was granted was not entitled to request anything from the monastery for work she had done in it (cf. canon 702 §1), but nevertheless the religious institute was to observe equity and evangelical charity toward her (cf. canon 702 §2).

BOOK III: THE TEACHING OFFICE OF THE CHURCH

747-833

Sebastian S. Karambai: Ministers and Ministries in the Local Church. (Book)

See above, canons 375-572.

749-753

RDC 55 1/05, 165-183: L.-M. Pocquet du Haut-Jussé: Quelques réflexions à propos du magistère. (Article)

It can be said that the Second Vatican Council and the Code of Canon Law present coherent teaching as to the authentic authority of the Church. But P. asks whether this is really complete, or whether it could evolve further and be made more detailed. He argues that the publication of a series of documents after the Council, and certainly after the Code, suggests that we have not yet arrived at a "definitive" document; and he outlines the preparatory steps for this evolution.

755

ACR LXXXII 4/05, 438-444: I. Cassidy: Ecumenism and Theological Education. (Article)

This is an address by C., former Cardinal President of the Pontifical Council for Promoting Christian Unity, at a graduation ceremony of the Brisbane College of Theology (BCT). BCT comprises theological colleges of the Catholic, Anglican and Uniting Churches. C. reviews the importance of an ecumenical dimension to theological education from the teachings of the Second Vatican Council, the Directory for the Application of Principles and Norms on Ecumenism, Pope John Paul II's Encyclical Letter *Ut Unum Sint*, and various declarations issued by the Holy See.

757

J 65 (2005), 31-54: Elissa Rinere: The Exercise of *Cura Animarum* through the Twentieth Century and Beyond. (Article)

See above, canon 230.

784

Per XCIV 3/05, 341-351: C. Tammaro: La cooperazione dei fedeli laici all'opera missionaria: una breve nota al can. 784 CIC. (Article)

Commenting on canon 784, T. concludes that the older distinction between members of the faithful based solely on the relationship of jurisdiction is no longer adequate to encompass the role of the laity that is envisaged in the Code. It is no longer sufficient to speak of the active engagement of sacred ministers in this relationship, and the passive reception of their ministry by the laity. Vatican II replaced this relationship with that of co-responsibility; consequently, the activity of lay faithful is rooted not in the relationship of jurisdiction, but in the freedom and responsibility that comes from the universal call to holiness and shared responsibility for carrying on the mission entrusted by Christ to the Church.

788

IE XVII 2/05, 441-461: M. Madonna: Lo statuto giuridico del catecumeno tra diritto universale e legislazione particolare. (Article)

See above, canon 206.

797

ELJ VII 34 1/04, 251-266: A. Madera: Religiously Affiliated Schools in America and Italy. (Article)

M. makes a comparison between the legal status of religious schools in America and those in Italy, looking at the different legal structures offered by the two legal systems and the differential access to public funding, as well as recent developments.

803-806

ACR LXXXII 4/05, 387-398: M. Putney: The Catholic School of the Future. (Article)

P., Bishop of Townsville (Queensland, Australia), discusses the Catholic identity of Catholic schools in Australia in the future. While the article is not primarily canonical (no canon is cited), it does in fact review and evaluate the requirements of canons 803-806. It also reflects on the expectations of the Congregation for Catholic Education.

807-814

ACR LXXXII 4/05, 409-420: P. Carpenter / G. McMullen: *Born from the Heart of the Church*: Implementing the Apostolic Constitution on Catholic Universities at Australian Catholic University. (Article)

C. and McM. enumerate the characteristics and responsibilities of a Catholic university as determined by the Apostolic Constitution *Ex Corde Ecclesiae* of 15 August 1990. They then demonstrate how Australian Catholic University (ACU) has sought to implement these, looking at the nature, objectives and essential characteristics of a Catholic university; the university community; the role of theology; the service to the Church and to society; the pastoral ministry; cultural dialogue; and evangelisation. They conclude with a positive assessment of ACU, although admitting that such tasks are never finished.

807-821

AkK 173 1/04, 92-118: H. Hallermann: Akkreditierung Katholisch-Theologischer Studiengänge? Eine kirchen- und staatskirchenrechtliche Problemanzeige. (Article)

This is an article about accrediting Catholic theological courses to the State universities on the basis of the so-called "Bologna Process", which is one of the aspects and fruits of the *Magna Charta Universitatum* of 18 September 1998. The aim of the Bologna Process is to achieve a European Area for Higher Education by 2010. The Apostolic See joined the Bologna Process on 19 September 2003, and H. looks at what this involves, and at certain problems connected with it.

810

IE XVII 2/05, 598-608: Italia, Consigliato di Stato, Sezione VI: Sentenza, 18 aprile 2005, n.1762 (con nota di commento di G. Piciché, *La tutela dell'identità religiosa dei centri educativi e la libertà religiosa*). (Document and commentary)

This is the text of a judgement of 18 April 2005 by the Italian *Consiglio di Stato* concerning some fundamental aspects of religious freedom in Italy, in the light of the present Concordat between the Catholic Church and the Italian State. The approval of the ecclesiastical authority constitutes a prerequisite for the appointment of academic staff in the *Università Cattolica del Sacro Cuore*. On the other hand, owing to the nature of the Concordat, the process for appointments is subject to the Italian courts' control of legitimacy, so as not to make it incompatible with the Constitution of the Italian Republic.

BOOK IV: THE SANCTIFYING OFFICE OF THE CHURCH

838

Proc CLSA 10/04, 153-170: R. F. Krisman: The RCIA: Canonical Issues. (Seminar paper at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

See below, canon 840.

BOOK IV, PART I: THE SACRAMENTS

840

Proc CLSA 10/04, 1–12: T. G. Doran: The Sacraments: Actions of Christ and Actions of the Church. (Address at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

D. covers the role of canon law in ensuring that the sacraments are celebrated worthily for the good of the faithful.

840

Proc CLSA 10/04, 153-170: R. F. Krisman: The RCIA: Canonical Issues. (Seminar paper at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

K. looks at questions concerning the proper ministers of the sacraments, sponsors and godparents, unbaptised children of catechetical age, reception into full communion and others.

841

IC XLV 89/05, 89-142: G. Kuminetz: La forma de la celebración del matrimonio desde la comparación entre ordenamientos. (Conference presentation)

See below, canons 1108-1109.

842

Ang 82 (2005), 821-832: J. Śliwa: La partecipazione dei fedeli al banchetto eucaristico alla luce del Codice di Diritto Canonico. (Article)

See below, canons 912-923.

842

Proc CLSA 10/04, 27-55: K. W. Irwin: *Lex Orandi, Lex Credendi, Lex Vivendi* in the Rites of Christian Initiation. (Address at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

I. looks at the theology of the present rites for Christian initiation and compares and contrasts them with the 1983 Code of Canon Law. He covers other current liturgical issues.

843

Proc CLSA 10/04, 195-206: P. J. Vere: Calling God's Special Children to Holiness: Sacramental Access for the Mentally and Cognitively Challenged. (Seminar paper at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

V. looks at the problems faced by the mentally and cognitively challenged when seeking the sacraments and suggests some practical canonical and pastoral solutions.

844

Ang 82 (2005), 821-832: J. Śliwa: La partecipazione dei fedeli al banchetto eucaristico alla luce del Codice di Diritto Canonico. (Article)

See below, canons 912-923.

844

Per XCIV 3/05, 353-416: J. J. Conn: Juridical themes in Eucharistic documents of the pontificate of John Paul II. (Article)

See below, canon 900.

846

Per XCIV 3/05, 353-416: J. J. Conn: Juridical themes in Eucharistic documents of the pontificate of John Paul II. (Article)

See below, canon 900.

BOOK IV, PART I, TITLES I & II: BAPTISM AND CONFIRMATION

849-878

Sebastian S. Karambai: Ministers and Ministries in the Local Church. (Book)

See above, canons 375-572.

872

RR 2005, 71-73: J. C. Huels: Minister of Baptism as Godparent. (Opinion)

H. states the view that there is no incompatibility between the roles of minister and godparent at infant baptism.

879-896

Sebastian S. Karambai: Ministers and Ministries in the Local Church. (Book)

See above, canons 375-572.

885

SCL I (2005), 21-24: Congregation for the Divine Worship and the Discipline of the Sacraments: Letter. (Reply)

While this letter was a private reply, its publication in *Notitiae* and *Communicationes* gives it a wider application. The Congregation directs a bishop to confirm a child who is otherwise ready and prepared, but below the age set by diocesan policy. Diocesan policy is legitimate but cannot override the rights of those who are properly disposed and legitimately request the sacraments.

891

SCL I (2005), 21-24: Congregation for the Divine Worship and the Discipline of the Sacraments: Letter. (Reply)

See above, canon 885.

BOOK IV, PART I, TITLE III: THE BLESSED EUCHARIST

897

Ap LXXVI 3-4 (2003), 683-726: L. Natale: Il culto eucaristico nella legislazione della Chiesa cattolica. I rapporti tra CIC e CCEO. (Article)

After a brief introduction N. gives a rapid review of the canons concerned with the cult of the Eucharist in the Latin code, followed by a similar review of the Oriental Code. Note is made of the variety of ecclesial traditions present in the Oriental churches. N. draws comparisons between Eastern and Western approaches to the Eucharist cult, noting that the Latins have developed some non-sacramental traditions of piety of the Blessed Sacrament.

897

TPQ 153 (2005), 82-87: H. Kalb / S. Lederhilger: Römische Erlässe. (Documents)

See above, General Subjects.

897-898

Ang 82 (2005), 821-832: J. Śliwa: La partecipazione dei fedeli al banchetto eucaristico alla luce del Codice di Diritto Canonico. (Article)

See below, canons 912-923.

897-958

Sebastian S. Karambai: Ministers and Ministries in the Local Church. (Book)

See above, canons 375-572.

900

Per XCIV 3/05, 353-416: J. J. Conn: Juridical themes in Eucharistic documents of the pontificate of John Paul II. (Article)

C. presents a synthetic reflection on four major themes of a juridical nature found in the Eucharistic magisterium of Pope John Paul II: the relationship

between Eucharist and priesthood; sacramental sharing in the absence of full communion; the Eucharist and the state of grace; and fidelity to liturgical norms.

903

HPR 1/05, 65: W. B. Smith: Celebret. (Response)

A *celebret* is a letter of introduction or identification that the possessor is a validly ordained priest who is currently in good standing. S. reviews the basis for this and its current implementation.

912-923

Ang 82 (2005), 821-832: J. Śliwa: La partecipazione dei fedeli al banchetto eucaristico alla luce del Codice di Diritto Canonico. (Article)

After some theological considerations on the institution of the Eucharist by Christ and the value of the Eucharistic Sacrifice, Ś. examines the canons of the 1983 Code, especially in the light of the 2004 Instruction *Redemptionis Sacramentum*, to establish "who" is invited to participate in the Eucharistic banquet, and "under what conditions". He also deals with the duty to receive Communion at least once a year; the question of receiving Communion a second time on the same day; Communion within and outside Mass; the Eucharistic fast; Communion in danger of death; and reception of Communion in a different Catholic rite from one's own.

916

Per XCIV 3/05, 353-416: J. J. Conn: Juridical themes in Eucharistic documents of the pontificate of John Paul II. (Article)

See above, canon 900.

917

HPR 4/05: 68-69: W. B. Smith: Multiple Reception of Communion. (Response)

S. addresses the question of whether someone who has received Communion at a morning Mass may also receive later in the day during a sick call that is not part of a Mass. S. replies that this should not be done, since the point is not to receive Communion every possible time it is available, but rather within the Mass that is properly celebrated with participation.

BOOK IV, PART I, TITLE IV: THE SACRAMENT OF PENANCE

959

For XVI/05, 35-38: Pope John Paul II: Confessors carry the "message of reconciliation". (Address)

The Pope encourages participants in a course for confessors arranged by the Apostolic Penitentiary. He draws attention to the sacrament as a source of purification, enlightenment and a unifying encounter with the Lord.

959-991

Proc CLSA 10/04, 81-92: P. J. Cogan: The Sacrament of Reconciliation: Issues, Praxis and the Future. (Seminar paper at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

C. identifies some current theological themes regarding the sacrament, and draws on recent documents to cover integral confession, general absolution, the seal of confession, the use of a fixed grille, absolution by schismatic priests, and the internet.

959-997

Sebastian S. Karambai: Ministers and Ministries in the Local Church. (Book)

See above, canons 375-572.

966

Per XCIV 1/05, 21-41: F. Walker: La facoltà per confessare. (Article)

In this article – a presentation of his doctoral thesis – W. considers the dispositions of canon 966 §1. After outlining the historical development of the practice of granting a licence or jurisdiction to a priest permitting him to hear confessions, he looks at the current discipline before examining the nature and significance of the contemporary concept of the "faculty" to hear confessions. The requirement of this faculty, he says, highlights the ecclesial dimension of the sacrament and its juridical character, and provides a safeguard for the well-being of the penitent.

BOOK IV, PART I, TITLE V:
THE SACRAMENT OF ANOINTING OF THE SICK

998-1007

Sebastian S. Karambai: Ministers and Ministries in the Local Church. (Book)

See above, canons 375-572.

1003

RR 2005, 19-23: Congregation for the Doctrine of the Faith: Only Priests Validly Administer the Sacrament of the Sick. (Document and commentary)

On 11 February 2005 the Congregation for the Doctrine of the Faith issued a "Note" on the minister of the sacrament of anointing of the sick, confirming that only a priest or bishop may validly administer this sacrament. The Congregation also stated that this doctrine is to be held definitively (*definitive tenenda*), so that neither deacons nor laypeople can exercise this ministry. Any attempt by them to do so would be simulation of the sacrament. The text of the document is given together with a commentary issued by the same Congregation.

BOOK IV, PART I, TITLE VI: ORDERS

1008-1054

Sebastian S. Karambai: Ministers and Ministries in the Local Church. (Book)

See above, canons 375-572.

1009

ELJ VIII 36 1/05, 4-20: W. Adam: The Reception, Recognition and Reconciliation of Holy Orders. (Article)

Questions of the mutual recognition, or not, of the ministry of different Churches have been high on the ecumenical agenda for many years. Catholic sacramental theology, manifest *inter alia* in canon law, has a clear understanding of the validity or invalidity of sacraments, including holy orders. A. presents a selection of case studies on ecumenical relationships between Anglican, Catholic and other Churches during the nineteenth and twentieth centuries. He posits that the Church of England does not have a doctrine of validity of holy orders, rather a doctrine of lawful ordination coupled with systems which ascertain whether or not the orders of other Churches can be recognised as interchangeable with its own.

1013

FI 3 (2004), 195-229: Z. Tracz: El iter redaccional de los cánones 953 y 2370 del Código de Derecho Canónico 1917 (un ejemplo del proceso de elaboración del primer Código de Derecho Canónico). (Article)

See above, Historical Subjects (*1917 Code*).

1029

QDE 18 (2005), 417-441: A. Perlasca: La tutela del diritto all'intimità negli esami psicologici dei candidati al seminario e agli Ordini sacri. (Article)

See above, canon 220.

1034

RR 2005, 73-74: J. Abbass: Admission to Candidacy for Orders. (Opinion)

In a case where a man was formally admitted to candidacy for orders and later ordained to the permanent diaconate, and ten years later applied to become a priest, A. considers that it would not be necessary for him to be readmitted to candidacy under canon 1034, although a written declaration of intention would still be required under canon 1036.

1036

RR 2005, 73-74: J. Abbass: Admission to Candidacy for Orders. (Opinion)

See above, canon 1034.

1040-1041

RR 2005, 74-75: G. T. Jorgensen: Irregularity for the Reception of Orders: Placing an Act of Orders. (Opinion)

A candidate for ordination to the diaconate proclaimed the Gospel, gave the homily, and assumed the role of deacon in dismissing the congregation during Mass; he also administered Benediction during Eucharistic adoration. J. considers that although such behaviour may warrant admonition or reprimand, it does not constitute an irregularity for the reception of orders.

1041

Per XCIV 2/05, 275-340: R. E. Jenkins: On the suitability of establishing clerical sexual abuse of minors (c. 1395 §2) as an irregularity *ex delicto* to the reception and exercise of orders. (Article)

Taking as his starting point the norms approved by the United States Conference of Catholic Bishops, J. sets out to consider the advantages and disadvantages of establishing the crime of clerical sexual abuse of a minor as an irregularity *ex delicto* to the reception and exercise of orders. He begins by outlining the history of the juridical institution of irregularity; he proceeds to consider irregularities in general, and irregularities *ex delicto* in particular; then, after considering the advantages and disadvantages of establishing such an irregularity, he concludes by considering possible alternatives to this way of dealing with the problem of clerics who sexually abuse minors.

1041-1044

RR 2005, 27-28: Congregation for the Doctrine of the Faith: Former Catholic, Later Ordained an Orthodox Priest, Seeks Readmission to the Catholic Church. (Document)

See below, canon 1364.

1051-1052

QDE 18 (2005), 417-441: A. Perlasca: La tutela del diritto all'intimità negli esami psicologici dei candidati al seminario e agli Ordini sacri. (Article)

See above, canon 220.

BOOK IV, PART I, TITLE VII: MARRIAGE

1055

FI 2 (2003), 223-231: R. Sobański: Związki partnerskie (Partner Relationships). (Article)

The German Constitutional Tribunal, in recognising the constitutional acceptability of legal partner relationships between persons of the same sex, invoked public opinion. Homosexuality ceased to be something shameful, and a ban on discriminating against homosexuals has become something obvious in the Western civilisation. In its *Considerations regarding proposals to give legal recognition to unions between homosexual persons* (3 June 2003) the Congregation for the Doctrine of the Faith reaffirms the position of the Catholic Church on the issue and supports it with rational, ethical, anthropological, and social arguments. S. primarily elucidates legal problems connected with the legalisation of same-sex relationships. He observes that the attempt to use the term "marriage" in reference to such relationships causes the gravest confusion. Marriage has its definition, whose essence relies on the difference between the sexes of the partners. It is this very essential difference that makes the attempt to refer to the relationship as a "marriage" strip the latter term of its meaning: a similarity of secondary characteristics of two objects does not of itself justify their appearing under one name. It is hard not to agree that no one, including a homosexual of either sex, is to be discriminated against. Still, a real protection of rights of this minority will not be secured by an equal treatment of what is unequal. Clarity of terms must be achieved in order to guarantee the true protection of rights to which every human person is entitled.

1055

For XVI/05, 5-9: Pope John Paul II: Media and Family: "A Risk and a Richness". (Address)

This is the text of Pope John Paul II's message for the 38th World Communications Day. Communication has a moral dimension and must respect truth and dignity. This does not always happen in the ways the media portray marriage and family life.

1055

For XVI/05, 10-12: Pope John Paul II: Respecting the Person and God's Design for Procreation. (Address)

This is the text of Pope John Paul II's message to the International Convention on Natural Regulation of Fertility and Culture of Life, 28 January 2004. Natural regulation is not simply about respecting natural rhythms of life, but the totality of the person.

1055

For XVI/05, 21-23: Pope John Paul II: Helping childless couples. (Address)

Pope John Paul II speaks to the members of the Pontifical Academy for Life on the anthropological and ethical aspects of procreation and encourages scientific research that seeks a natural way to overcome infertility.

1055

For XVI/05, 39-41: Pope John Paul II: Reassert marriage and family as gifts from a loving God. (Address)

The Pope addresses a group of university teachers on the theme of their symposium that the future of Europe is staked on the family.

1055

For XVI/05, 64-67: Holy See: The value of marriage and the family. (Intervention)

This is the intervention of the Holy See's representative at a meeting of the International Commission of the Civil State, aimed at harmonising legislation on civil status. Various forms of cohabitation should not be granted equal status to marriage.

1055

For XVI/05, 75-82: Pontifical Academy for Life: The dignity of human procreation and reproductive technologies. (Message)

The Academy comments that what started out as an approach to the problem of sterility has developed into a preference for artificial reproductive technology rather than fostering natural means. It has brought with it a variety of moral and

ethical problems, the appropriate use of scarce resources as well as that of discarded embryos. The document also draws attention to the responsibilities of politicians in this area.

1055

For XVI/05, 160-191: R. Barrett: Two Presuppositions of Christian Marriage. (Article)

B. investigates the cultural presuppositions of marriage in Hebrew and particularly classical Greek and Roman understanding, and how these affected the Christian understanding of marriage. He focuses on two aspects in particular, heterosexuality and a relationship that is totally open to the dynamic of consent.

1055

For XVI/05, 192-197: R. Schmid: Is marriage just discrimination? (Article)

Is discriminating between marriage and other forms of relationship unjust? Are homosexual relationships equivalent to marriage? S. argues that for society to distinguish between them does not mean lack of respect for homosexuals.

1055

INT 10 1/04, 4-15: Giulia Paola di Nicola / Attilio Danese: Il matrimonio come risorsa sociale. (Article)

The article sets out marriage as the ideal form of human relationship, to be given a privileged position by society. Here sexuality has its true context and leads to procreation. The difference of gender within marriage shows how other differences can be harmonised, and provides an example not least for the children and society in such matters as sharing economic goods. Married people rely on the community, civil society and the Church for preventative and rehabilitative assistance.

1055

INT 10 1/04, 19-31: G. Eid: Visages et paysages: Du mariage, du couple et de la famille. (Article)

E. holds that marriage based on mutual love is a new reality made possible by modern social and technological advances. Firstly, since the 1970s an

understanding has developed of marriage based on love, with the effect of making the relationship more fragile. Secondly, an economy now operates which is based upon information and consumption, with manual labour reduced to a minimum. So now marriage does not necessarily make for economic stability. Thirdly, education and formation are prolonged throughout life, and we continually reinvent ourselves; no longer do we enter a stable adulthood in our twenties. A corollary is that marriage is not seen as permanent, but rather as one of many life projects. Such developments, he says, are not really negative; but a new reality has emerged for marriage.

1055

INT 10 1/04, 33-46: Karla B. Hackstaff: How Gender Informs Marital Consent. (Article)

The foundation here is empirical psychology: research shows that a new divorce culture has emerged, where marriage is optional and fortuitous in nature, whilst divorce opens the way to fresh options. Often the increase in divorce is attributed to individualism, which operates at the expense of the rights of others. However, in fact under the surface women's behaviour commonly has not changed: they seek not so much to exercise power as to enjoy freedom from domination. To tackle the problem of divorce, H. states that society must first recognise that attitudes have still to undergo a radical shift away from the traditional understanding of the role of the wife.

1055

INT 10 1/04, 48-60: A. Mattheeuws: Tonalités nouvelles dans la théologie du sacrament du mariage. (Article)

M. outlines the history of marriage in theology, underlining the movement from "goods" to "ends". In contrast the Second Vatican Council emphasised rather the "reciprocal dedication of the spouses": the terminology of "gift" predominates, so the prioritising of ends is replaced by equal values of procreation and shared life, with benefit for subsequent theology, not least in the teaching of John Paul II

1055

J 65 (2005), 88-118: M. Lowery: The Nature and Ends of Marriage: A New Proposal. (Article)

L. maintains that the traditional hierarchy of the nature and ends of marriage now exists in a broader framework. *Casti Connubii* and *Gaudium et Spes* reaffirm the primary end of marriage without the traditional hierarchical vocabulary. He considers that there are two ways of looking at marriage. He uses an analogy taken from photography. He compares looking at marriage with looking through two different lenses. A zoom lens allows us to focus in depth on the relationship of the couple itself. "The essence of marriage, namely the indissoluble conjugal union, is considered an end of marriage in so far as it is not a static reality that the couple possesses, but something they are to continue to achieve." *Gaudium et Spes* did not use the traditional language of the "ends" of matrimony, not to abandon them but because the language is easily misunderstood. L. gives an extended exegesis of *Gaudium et Spes*. Against some canonists he holds that the earlier traditional terminology on the ends of marriage is not to be abandoned or denigrated but sublated. Canon 1055 of the 1983 Code speaks of marriage as being "by its nature … ordered to the good of the spouses". He speaks of the need for a further article to explore the implications of the present proposal for the practical matter of declarations of nullity.

1055-1165

Proc CLSA 10/04, 13-25: R. J Flummerfelt: Theology of Marriage: Complementarity between the Latin and Eastern Codes. (Address at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

F. explains the differences between the Latin and Eastern Codes which follow from the different theological approaches to marriage and how these complement each other. He looks at the canonical differences between the Codes and their effect on couples getting married and in marriage. He gives tables of the various ritual Churches and details of the canons on competence.

1055-1165

Sebastian S. Karambai: Ministers and Ministries in the Local Church. (Book)

See above, canons 375-572.

1057-1061

RR 2005, 76-78: G. T. Jorgensen: Role of Parish Priest or Delegated Cleric in "Civil Remarriage" of Divorced Catholics. (Opinion)

J. offers some pastoral considerations for a case where a Catholic husband and wife obtained a civil divorce and were later reconciled and wished to "remarry".

1059

IE XVII 1/05, 303-333: Pontificio Consiglio per i Testi Legislativi: Nota circa la validità dei matrimoni civili celebrati nel Kazakhstan nel periodo comunista, 13 maggio 2003 (con *nota* di M. A. Ortiz, *La validità del matrimonio civile celebrato da battezzati nella Chiesa ortodossa*). (Document and commentary)

The Pontifical Council for Legislative Texts replies to a question presented by the Apostolic Administrator of Kazakhstan. The answer first of all identifies the various canonical aspects of the problem, and summarises the country's geographical, historical and political components. It then sets out the vicissitudes of the institution of marriage during the Communist period and the solution adopted by the Russian Orthodox Church. The various possible scenarios regarding the marriage partners are dealt with under four main headings. The competence of the tribunals is also considered. Both the CIC and the CCEO (especially canon 781) are taken into account. In his commentary O. briefly presents the pastors' concern with the fact of the Catholic faithful who were civilly married during the years of Soviet domination in Kazakhstan and who now want to marry canonically after obtaining a civil divorce from their previous marriage. O. deals with the Church's jurisdiction over the marriage of non-Catholics; the law to be applied by the Catholic authority in the light of *Dignitas Connubii*; and also – bearing in mind that the Orthodox authority may consider the civil marriage of the faithful to be non-sacramental but valid – the problems and procedures that the Catholic authority must take into account in the reception of such practice. O. believes that the chief novelty of the Pontifical Council's document is the high degree of importance given to canon 781 of the CCEO, which establishes that whenever a Catholic authority has to judge the validity of a marriage between two baptised non-Catholics, the law to be applied is that which the parties were subject to at the time of the wedding; and as far as the form of celebration is concerned, the Church recognises any public form prescribed or accepted by the law of the parties (provided that, if at least one of the parties was Eastern, the wedding was conducted according to a sacred rite). The recent Instruction *Dignitas Connubii* now accepts the solution contained in the CCEO, which is absent from canon 1059 of the 1983 Code.

1059

Per XCIV 3/05, 477-507: J. Kowal: L'istruzione *Dignitas Connubii* e la competenza della Chiesa circa il matrimonio dei battezzati. (Article)

See below, canons 1671-1691.

1060

For XVI/05, 13-17: Pope John Paul II: Marriage must enjoy a true "favour of law". Address to Members of the Tribunal of the Roman Rota. 29 January 2004. (Address)

Pope John Paul II responds to criticisms of the presumption in favour of the validity of marriage. This is not about preserving the *status quo*, but upholding the reference point of what appears to be a correctly placed act. To demand positive proof of the validity of such acts would be to demand the impossible. In consequence the failure of marriage cannot be taken as a presumption of invalidity.

1060

IC XLV 89/05, 13-33: Z. Grocholewski: La función del juez en las causas matrimoniales. (Article)

See below, canon 1421.

1060

IC XLV 89/05, 243-257: J. I. Bañares: El «favor matrimonii» y la presunción de validez del matrimonio contraído. Comentario al discurso de Juan Pablo II al tribunal de la Rota Romana de 29.I.2004. (Commentary)

Some authors have argued for a change from the *favor iuris* of marriage to the *favor libertatis* of the person. In his address to the Rota in 2004, Pope John Paul II dealt with this error and resolved the apparent contradiction between the two principles. The *favor matrimonii* is based on the nature of the person, of marriage and of society, and constitutes a principle inspiring every matrimonial legal order. The presumption of validity is more than a simple formal technique or a mere instrument of positive law.

1060

Per XCIV 2/05, 243-273: J. Kowal: Conflitto tra *favor matrimonii* e *favor libertatis*? (Article)

In this article, K. considers the accusation often made that canon law favours institutions over individuals. One favourite field of such allegations is that of cases of matrimonial nullity. Those who make this criticism claim that, after a marriage has broken down, the freedom of the individual to marry (*favor libertatis*) is sacrificed to the presumption of the validity of the marriage that has failed (*favor matrimonii*). After examining the two concepts, and arguments that indicated a conflict between them, K. concludes that, properly understood, there is no conflict.

1077

QDE 18 (2005), 289-298: A. Giraudo: Il divieto alle nozze: tutela del diritto al matrimonio. (Comment)

G. sets out various problems in connection with the prohibition on marriage which the local Ordinary can impose in specific cases by virtue of canon 1077 §1. In the 1917 Code (canon 1039 §1) this was allowed for a "just" reason; the 1983 Code now requires the reason to be "grave". G. examines the nature of this prohibition (which is different from the *vetitum* referred to in canons 1684 and 1685) and its juridical and pastoral consequences. He feels that the general provision in canon 1077 §1 needs to be made more specific at local level, and in this connection he refers to the *Policies* issued in the United States in the 1970s, which came as a response to the problems arising from marriages involving minors, and helped provide some sort of guidance as to when the prohibition should be applied.

1084-1103

SCL I (2005), 359-402: A. Mendonça: Substantive and Procedural Jurisprudence of the Roman Rota as Reported in its *Relazione Annuale 2004.* (Article)

This is in fact an unofficial translation of the summary report given by the Dean of the Roman Rota outlining the decisions given in 2004, and highlighting trends in substantive and procedural jurisprudence.

1085

RR 2005, 23-26: Congregation for the Doctrine of the Faith: Multiple Marriage Cases Involving Pauline Privilege and *Ligamen*. (Documents)

See below, canon 1143.

1086

RDC 55 1/05, 7-35: S. Ferrari: Le mariage des autres. Le mariage entre personnes relevant de systèmes juridico-religieux différents. (Article)

As far as marriage is concerned, connections between legal systems governing religion have become problematic in the West, because of increased population migration. The Catholic, Jewish and Islamic legal systems governing marriage have a common foundation based upon the idea that marriage is an institution of divine origin and of universal value. According to F., the way that Catholic canon law concerning marriage diverges from that of Judaism and Islam is in the process of secularisation which has been less marked in the latter two legal systems.

1095

Per XCIV 3/05, 509-542: P. Bianchi: L'istruzione *Dignitas Connubii* e il c. 1095. (Article)

See below, canons 1671-1691.

1095

QDE 18 (2005), 376-392: P. Bianchi: Il can. 1095 nell'istruzione *Dignitas connubii*. (Article)

See below, canons 1671-1691.

1095 2º

Proc CLSA 10/04, 57-79: J. P. Beal: Finding Method in the Madness: Writing Sentences in Lack of Due Discretion Cases. (Seminar paper at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

B. takes as examples three recent sentences of the Roman Rota and discusses how sentences on this ground should be written. He advocates brief, clear

argument, rather than the narrative approach often adopted by North American tribunals.

1095 2º-3º

FI 3 (2004), 231—247: G. Leszczyński: Niedojrzałość emocjonalna jako przyczyna niezdolności konsensualnej kontrahenta (Emotional Immaturity as an Impediment to Matrimonial Consent). (Article)

Taking up the issue of emotional immaturity as a cause for declaring a marriage null and void, L. begins his reflections with a look at human personality. From the point of view of marriage validity, of special significance is the analysis of a person's freedom at the moment of taking this decision, which is undoubtedly affected by the emotional sphere of his or her personality and by the process of emotional development. The cause of the nullity of a marriage discussed here, in turn, requires a rather precise definition of the notion of emotional immaturity and of the factors by which it may be triggered. The last part of L.'s reflections is devoted to an analysis of canon 1095, and especially to the definition of cases when this immaturity is serious enough to exclude the validity of marriage.

1095 2º-3º

For XVI/05, 248-281: Regional Tribunal of Second Instance: Sentence *coram* Bajada, December 10, 2003. Lack of discretion of judgement; inability to assume; exclusion of bonum prolis. (Sentence)

The decision was affirmative on the male respondent's inability to assume, but negative on the exclusion of the good of children (first instance). The courtship was mostly by phone as the respondent was abroad and would not give the petitioner his address or phone number, or during visits to Malta. B. emphasises the personalist nature of the *consortium vitae.* In recent years a number of Rotal decisions have supported affective immaturity as a psychic cause of incapacity. The respondent was aggressive, violent and manipulative and never seems to have treated the petitioner as a wife. He did not for example consider it necessary to give her a key to the door, or take her needs into account when spending money.

1095 2°-3°

IC XLV 89/05, 35-53: A. Stankiewicz: Jurisprudencia de la Rota Romana sobre inmadurez afectiva. (Conference presentation)

In the first part of this lecture S. analyses the inclusion of affective immaturity among the factors affecting the capacity for informed consent, in line with Rotal jurisprudence in the period immediately following the Second Vatican Council. In the second part he evaluates the influence of affective immaturity on the psychological faculties according to the legislative hypotheses of canon 1095 2°-3°, again following Rotal jurisprudence. Affective immaturity is relevant to marriage nullity when the essential elements for informed consent are substantially altered, but not when it merely constitutes a limitation on the development of personal maturity relative to the person's chronological age. In this regard Rotal jurisprudence still does not pay sufficient attention to the distinction between essential (substantial) freedom and effective freedom, but tends to limit itself to generic affirmations on the diminution or reduction of internal freedom.

1095 2°-3°

SCL I (2005), 95-146: A. Mendonça: Recent Rotal Jurisprudence on Marriage Nullity Cases Judged in Accord with Canon 1682, §2. (Article)

See below, canon 1682.

1095 3°

SCL I (2005), 315-358: L. Robitaille: Another Look at Perpetuity: Revisiting the Jurisprudential Criteria for Canon 1095, 3°. (Article)

R. takes as her starting point the shift in Wrenn's explanation of canon 1095 3°. She examines the origin of the grounds in the concept of psychic impotence, with its implication of perpetuity, and how Rotal jurisprudence has seen a gradual shift towards seeing perpetuity as an element of the object of consent, rather than a requirement of incurability in the psychic cause. However, perpetuity has not disappeared entirely since the absence of a cure is seen as an element in the proof of incapacity rather than mere difficulty.

1095-1103

HPR 1/05, 8-19: S. Tennant: Judging Invalidity the American Way. (Article)

T. provides an extended review and critique of Lawrence Wrenn's book, *Judging Invalidity,* stating that this book promotes "the idea that Catholics can divorce and remarry just like anyone else". T. critiques the cases on lack of due discretion, lack of competence, condition, error, and simulation, and concludes that in each case the invalidity of the marriage was not proven. The process of granting declarations of nullity, the author contends, dismisses the sacredness of marriage vows, and that "what Father Wrenn calls evidence for invalidity, I call life".

1097-1098

SCL I (2005), 95-146: A. Mendonça: Recent Rotal Jurisprudence on Marriage Nullity Cases Judged in Accord with Canon 1682, §2. (Article)

See below, canon 1682.

1097-1098

SCL I (2005), 245-268: K. Boccafola: Deceit and Induced Error about a Personal Quality. (Article)

B. begins by defining "deceit" and "error", and distinguishes error from ignorance. He then reflects on how deceit and error affect the will. Deceit creates error, affecting the intellect. Only substantial error affects the will. Error about a quality of the person is accidental and does not nullify consent except in three circumstances: where it is a condition *sine qua non*; where it is a quality directly and principally intended; or where the error about a quality that could seriously disturb the *consortium vitae* was imposed or induced by deceit. This reflects the clarification brought about in producing the 1983 Code, and a desire to eliminate the concept of *error redundans.* B. then looks at the debate on the nullifying force of deceit. There are three explanations: positive law (responding to injustice); the personalist approach (the deceiver does not properly bestow him/herself, and the deceived does not give true acceptance); and natural law (interference with internal liberty). B. then gives an exegesis of canon 1098 and the means of proof. Finally he provides illustrations from two Rotal cases.

1098

SCL I (2005), 403-427: Deceit: Decision *coram* Turnaturi 22 May 2003 (India). (Sentence)

The Rota upheld the negative first instance decision. The claims of deceit related to disappointment on the part of the petitioner over financial and property arrangements rather than any quality in the respondent. Turnaturi takes a personalist approach. Conjugal consent cannot be separated from genuine self-giving. In consequence the person presenting a false image of self would contradict genuine self-giving. The deception itself is disturbing to the partnership of life. No one has a right to a partner without defects, but everyone has a right to a sincere gift free from deceit. One must look at three elements: deceit perpetrated in order to obtain consent; deception centred on a quality of the other party; this quality being one that of its nature is capable of disturbing the partnership of life, by reference to its essence, properties or ends. He explores both the element of malice violating a right, and that of the deceiver's own consent being vitiated. He comments in passing that while not an issue in this case, deceit could amount to a violation of natural law.

1098

SCL I (2005), 429-446: Deceit: Decision *coram* Ferreira Pena, 17 July 2001 (Ireland). (Sentence)

In this case the respondent was pregnant at the time of marriage and subsequently admitted that the husband was not the father. The case was first decided in the negative on grave lack of discretionary judgement and inability in both parties. The appeal court overturned this on the grounds of grave lack of due discretion in both parties and added deceit on the part of the respondent. Since this was *ultra petita* the Rota ignored the latter ground and added it as at first instance, but gave a negative decision on all three. This *turnus* now upholds the negative decision on deceit. The *ponens* focuses on the question whether deceit nullifies by virtue of positive law, in which case it would be inapplicable, or natural law. He cites Stankiewicz to the effect that while the disposition of canon 1098 is of positive law, one cannot preclude *a priori* an error that would nullify by virtue of natural law. The quality that will disturb the communion of life must be measured in terms of both objective and subjective gravity. In this case it was not clear that the petitioner set as much weight as had been alleged on the deception he had undergone.

1101

FI 2 (2003), 209-222: G. Leszcyński: Ważność małżeństwa kanonicznego a wykluczenie dobra małżonków (The Validity of Canonical Marriage and the Exclusion of the Good of the Spouses). (Article)

The 1983 Code of Canon Law puts the reasons for invalidity of marriage into three different categories: diriment impediments, defects in matrimonial consent, and lack or defect of canonical form. Among the defects in matrimonial consent, the Code, in canon 1101 §2, lists simulation. Simulation signifies that a person contracting marriage expresses marital agreement merely on the surface, excluding in reality, through a positive act of will, the marriage itself, or some essential elements or an essential property of marriage. The ground of exclusion of the good of the spouses constitutes a *novum* as compared to the 1917 Code of Canon Law. With regard to the simulation of matrimonial consent, the old Code merely pointed out three grounds of partial simulation: exclusion of the right to matrimonial acts, exclusion of unity, and exclusion of the indissolubility of marriage. The present article attempts to look at the relationship between the validity of marriage and exclusion of the good of the spouses, with a consideration of the form which such exclusion may take, and how it is to be proved.

1101

For XVI/05, 204-247: Apostolic Tribunal of the Roman Rota: coram Defilippi, November 15, 2001. Exclusion of *bonum sacramenti*. (Sentence)

The decision was affirmative and was based on the respondent's abandonment of his Catholic upbringing and embracing of the values of the student movements of the late 1960s. The Rota rejects the view expressed at second instance that it was a question of error that did not affect the will. Rather, error can in fact specify the object of consent, and thus the will is applied to it, albeit implicitly and indirectly.

1101

For XVI/05, 248-281: Regional Tribunal of Second Instance: Sentence *coram* Bajada, December 10, 2003. Lack of discretion of judgement; inability to assume; exclusion of bonum prolis. (Sentence)

See above, canon 1095 2º-3º.

1101

SCL I (2005), 95-146: A. Mendonça: Recent Rotal Jurisprudence on Marriage Nullity Cases Judged in Accord with Canon 1682, §2. (Article)

See below, canon 1682.

1108

SCL I (2005), 95-146: A. Mendonça: Recent Rotal Jurisprudence on Marriage Nullity Cases Judged in Accord with Canon 1682, §2. (Article)

See below, canon 1682.

1108

SCL I (2005), 359-402: A. Mendonça: Substantive and Procedural Jurisprudence of the Roman Rota as Reported in its *Relazione Annuale 2004.* (Article)

See above, canons 1084-1103.

1108

SCL I (2005), 447-462: Defect of Canonical Form: Decision *coram* Monier, 23 November 2000 (USA). (Sentence)

This case involved a visiting archbishop as celebrant because he was invited by the parties. While the parish priest had approved the arrangements, there was no evidence that delegation had been sought or given. Neither the priest nor the archbishop can recall the exact circumstances, and the couple supposed everything was in order. In this case the argument revolves around the applicability of common error, particularly in the situation of a single celebration of marriage. The decision was negative because the *turnus* took the view that, in the common estimation of the faithful, bishops, in virtue of their dignity, can assist at marriages everywhere. This is error rather than ignorance and therefore the Church supplies the necessary delegation.

1108-1109

IC XLV 89/05, 89-142: G. Kuminetz: La forma de la celebración del matrimonio desde la comparación entre ordenamientos. (Conference presentation)

The question of the form of celebration of marriage involves many issues: the doctrine of the Church and its competence with regard to marriage; the idea of a "legal order"; and the form itself and its implications when different legal orders are involved. If the contracting parties belong to different Churches, there is the problem of which rules are to be followed, as the marriage can only be celebrated once. The rules of different orders cannot be applied simultaneously. The validity of marriages, juridical certainty, and the ending of disagreements between different legal orders, all depend on the solution to this problem. The form of celebration of marriage is a merely ecclesiastical law, so that the authorities may amend it, e.g. by abolishing it, or extending the sphere of its obligation. At the same time the form itself is very complex, as it combines three dimensions which are all related to one another: the natural, the sacramental, and the liturgical forms of the marriage rite. As regards the minister in an inter-ritual marriage, the most eminent authors do not agree. Some state that a *ritus sacer* celebrated by a priest is essential; others consider that the presence of a priest is not always necessary. K. believes that this problem cannot be resolved according to the principles of legal science, and that an authentic interpretation by the supreme Legislator is needed confirming the necessity of the presence of a priest *ad validitatem*.

1109

SCL I (2005), 467-474: A. Mendonça: Competence of Parish Priests to Assist at Inter-ritual Weddings. (Article)

Where the territories of a Latin rite and Eastern rite parish coincide, in principle either parish priest is competent to celebrate the marriage, but if both parties are Eastern rite, the Latin rite priest needs delegation from the Eastern rite pastor or hierarch for validity. If one party is Latin and the other Eastern, then a priest from either rite can officiate validly, but for lawfulness should obtain the permission of the other. The records should be entered in the church where the marriage takes place.

1111

IE XVII 1/05, 103-162: Tribunale Apostolico della Rota Romana. *Reg. Aprutini seu Marsorum*. Nullità del matrimonio. Timore. Esclusione dell'indissolubilità e della prole. Difetto di forma. Sentenza definitiva. 12

giugno 2003. Caberletti, Ponente (con *nota* di G. M. Corsi, *L'interpretazione delle norme sulla supplenza di facoltà per assistere al matrimonio*). (Sentence and commentary)

The testimony of the priest who had assisted at the ceremony made the Rotal judges think of invalidity through defect of canonical form. Thus a new head was lawfully introduced and was added to the initial heads: force and fear, and exclusion of *bona sacramenti et prolis*. Only *defectum formae canonicae* was given an affirmative verdict. The priest, a cousin of the respondent, had been informally told, some time in advance, about the wedding, and comments were made to the effect that it would be wonderful if he were to be the priest assisting. Quite unexpectedly, he did actually appear in the church just as the ceremony was about to begin. He politely greeted the priest who, having been delegated by the parish priest, was about to assist at the wedding, and informed him of his connection with the family. Both priests were happy at a swift change in plans, because the delegated priest was in charge of a distant parish and had things to do that morning. Long after the initial nullity proceedings were brought and the case had gone to the Rota to be examined on the grounds of force and fear and exclusion of *bona sacramenti et prolis*, suspicion arose as to the validity of the wedding because of defect of form. The wedding having taken place in 1980, the canons of the 1917 Code were considered by the Rota. General delegation was not possible in this case. In addition, the acts showed that there was no specific delegation for the priest who actually assisted at the wedding; that he did not even think of the need for any delegation; and that there was no room for common error. In his commentary on the case, C. studies the various aspects of the delegation to priests to assist at marriage.

1111

SCL I (2005), 447-462: Defect of Canonical Form: Decision *coram* Monier, 23 November 2000 (USA). (Sentence)

See above, canon 1108.

1116

FC 7 (2004), 119-138: A. Saje: The preparation of canon 1098 *CIC*/17 on the extraordinary form of the celebration of marriage from the beginning of the work of the Pio-Benedictine codification of 1904. (Article)

The current understanding of the extraordinary form of the celebration of marriage prescribed by canon 1116 of the 1983 Code and canon 832 of the CCEO has its origin in canon 1098 of the 1917 Code. This article begins by

examining some hitherto unknown sources regarding the preparation of the canon on the extraordinary form of the celebration of marriage. S. elaborates on the documents first produced in the course of preparing the Pio-Benedictine Code, which was initiated in 1904 when Pope Pius X (1903-1914) created the Pontifical Commission for the Codification of Canon Law. Research on the genesis of canon 1098 of the 1917 Code was undertaken using various *schemata* and other documentation found in the Pontifical Commission for the Codification of Canon Law reserved in the Vatican Secret Archives, as well as the resources of Father Benedetto Ojetti SJ, which are to be found at the Pontifical Gregorian University. The *schemata* consulted encompass those from 1905 (1905, 1906[1], 1906[2], 1913[1], 1913[2], 1916) until the promulgation of the 1917 *Codex*. S. discusses the advisability of inserting a canon into the Code regarding the minister of marriage. Using a chronological development he also reflects upon the Decree *Ne Temere*, along with the preparatory *schemata*, since these had a profound influence on the preparation of the codification regarding the question of the extraordinary form of marriage. Authentic replies as well as questions proposed (*dubia*) relate to the length of time the priest was to be considered absent before a couple could validly contract marriage in the presence of just two witnesses.

1116

IE XVII 1/05, 303-333: Pontificio Consiglio per i Testi Legislativi: Nota circa la validità dei matrimoni civili celebrati nel Kazakhstan nel periodo comunista, 13 maggio 2003 (con *nota* di M. A. Ortiz, *La validità del matrimonio civile celebrato da battezzati nella Chiesa ortodossa*). (Document and commentary)

See above, canon 1059.

1124

ELJ VIII 37 7/05, 121-146: J. McAreavey: Mixed Marriages: Conversations in Theology, Ecumenism, Canon Law and Pastoral Practice. (Lecture)

This is the text of the fifth biennial Lyndwood Lecture, jointly arranged by the Canon Law Society of Great Britain and Ireland and the Ecclesiastical Law Society. McA., the Bishop of Dromore, traces the developments in the law on mixed marriages beginning with an outline of the canonical provisions in force prior to Vatican II. The impact of the Council teaching on ecumenism and religious freedom became apparent with the promulgation of *Matrimonii Sacramentum* (1966), *Crescens Matrimoniorum* (1967) and *Matrimonia Mixta*

(1970). These documents put the legislation on mixed marriages on a new footing and provided the basis for the legislation of the 1983 Code. McA. analyses various ecumenical dialogues on mixed marriages: ARCIC, the dialogue between the Lutheran World Federation, the World Alliance of Reformed Churches and the Catholic Church, and ongoing dialogues between the Methodist Church and the Orthodox Church (primarily in the United States) and the Catholic Church. He notes in particular what those discussions have to say on the issue of "the promises" and canonical form, and comments on the provisions of the 1983 Code on mixed marriages. He considers the basis of the commitment required of the Catholic party "to remove dangers of defecting from the faith" and the commitment "to do all in his or her power in order that all the children be baptised and brought up in the Catholic faith". He accepts the view of Fr Navarrete that whereas the former obligation is of divine law the latter obligation goes no further than "to do his or her best" (*pro viribus* in the Latin phrase). In the final section, he reflects on the pastoral impact of developments in canon law regarding mixed marriages, noting the statements of the World Gatherings of Interchurch Families in Geneva (1998) and Rome (2003).

1124

IE XVII 1/05, 221-245: C. J. Errázuriz: I matrimoni misti: approccio interordinamentale e dimensioni di giustizia. (Conference presentation)

Every marriage can be referred to several juridical orders; at least to the religious and civil orders. The canonical order is increasingly aware of the appropriateness of limiting its own sphere of action in what concerns human law. In this presentation at the 12th Congress of the *Consociatio Internationalis Studio Iuris Canonici Promovendo* held in Beirut in September 2004, E. studies mixed marriages and looks for what is just or unjust in them. He studies the mixed marriage first in its natural juridical dimension, and then, at greater length, in the light of specifically intraecclesial justice and of its prevalently supernatural character. He puts forward a concluding thought: we must not forget the good of the faith upon which the Church's entire disciplinary tradition is based; at the same time the demands of the natural right to marriage must be taken into account. Justice is intrinsic to human nature and to the Church: it forms the foundation of the canonical order, and of the recognition that canon law grants to other juridical orders.

1127

CLSN 142/05, 74-75: G. Read: Invalid Dispensation from Canonical Form. (Article)

The dispensation from canonical form was at first refused; a subsequent request for a dispensation was presented to another bishop, who granted it. The wife-to-be at that time was a non-Catholic, but the marriage took place only after she had converted to Catholicism. R. points out the reasons why the dispensation and marriage were invalid.

1134

HPR 7/04, 8-17: T. P. Looney: John Paul II: Defender and theologian of the bond. (Article)

L. examines the addresses of Pope John Paul II to the Roman Rota and the emphasis of these addresses on the indissolubility of the marriage bond. L. claims that this is not simply a question of law, but that the Pope has elaborated an entire theology of the bond, in order to bring about a "culture of indissolubility".

1141

RR 2005, 76-78: G. T. Jorgensen: Role of Parish Priest or Delegated Cleric in "Civil Remarriage" of Divorced Catholics. (Opinion)

See above, canons 1057-1061.

1141-1150

Ang 82 (2005), 673-713: L. Sabbarese: Lo scioglimento del vincolo matrimoniale in favore della fede. (Article)

This is the original Italian version of the article referred to in the following entry.

1141-1150

SCL I (2005), 199-245: L. Sabbarese: The Dissolution of a Non-Sacramental Marriage in Favour of the Faith. (Article)

After a brief historical introduction, S. takes us through the Norms issued by the Congregation for the Doctrine of the Faith in 2001, explaining their practical

application. He mentions the possibility of a conflict of competence between that Congregation and the Congregation for Divine Worship in the case of a marriage where the unbaptised party has subsequently received baptism. He also points to the pastoral difficulty arising from the unwillingness to grant a dissolution for marriage to a second unbaptised person, after dispensation from disparity of cult for the first marriage. In some parts of the world, where the great majority of the population is unbaptised, this severely restricts the choice available. On the other hand, while prior baptism is the norm, article 8 does allow marriage with a catechumen, provided that baptism is certain to take place in the near future. However, in such a case dispensation from the impediment of disparity of cult must be granted. With regard to the proofs of non-baptism S. points out that indirect proofs are possible, as well as direct evidence from the family, referring to the reply of the Holy Office of 1 August 1883 (*Codicis Iuris Canonici Fontes*, vol. IV, p. 414). Non-baptism can be presumed where both parents belonged to groups that reject baptism, or confer it only on adults, or where neither parent belonged to any religion; but in other cases non-baptism cannot be presumed, but must be proved. When commenting on article 17, S. takes up the question of non-consummation, and argues that competence lies with the Congregation for the Doctrine of the Faith at least where a dispensation from disparity of cult has been granted. Where dissolution is sought to enter a religious community dispensation from the impediment to admission to the novitiate must be sought first, and then submitted to the Congregation for the Doctrine of the Faith, which will grant the dissolution before final vows. S. also offers guidance on the respective scopes of the report of the instructor and the *votum* of the bishop.

1143

RR 2005, 23-26: Congregation for the Doctrine of the Faith: Multiple Marriage Cases Involving Pauline Privilege and *Ligamen*. (Documents)

A Jewish man first married a Jewish woman. The couple divorced, and the man married another Jewish woman from whom he was later divorced. Both marriages took place in synagogues. The man was eventually baptised in the Presbyterian Church. Subsequently he entered into a civil marriage, his third, with a Catholic woman who was free to marry. The man did not want to become a Catholic, but was willing to submit his marriages to the judgement of the Church in order that his Catholic wife might receive the sacraments and practise her faith. The text is given of the request submitted by the judicial vicar to the Congregation for the Doctrine of the Faith, and of the Congregation's reply, in which it gives its reasons for agreeing that the second marriage was to be considered null on the basis of the impediment of *ligamen*, and that the first marriage was to be dissolved by virtue of the Pauline privilege.

1151-1155

FI 2 (2003), 173-188: J. Wroceński: Separacja w prawie kanonicznym (Separation in Canon Law). (Article)

In introducing the institution of separation into the system of State law, the Polish legislator did not simultaneously limit the possibility of divorce. The ease of divorce increases the probability of the disintegration of the marital community. Consequently, the general public should become acquainted with and apply the institution of separation, which offers an opportunity to rectify wrongs and rebuild relations within marriage and the family. W. first presents separation as a canonical institution, and then discusses the different kinds of separation. While separation is to be treated as a last resort, when all efforts to save the unity of the marriage have proved futile, it is a better solution than divorce in that the spouses who live in separation cannot contract a new marriage, and thus there is a real chance of returning to normal. Only life within a community based on conjugal and familial love can ensure the proper protection of the good of the spouses themselves and their children.

1152-1153

IE XVII 2/05, 463-489: B. Roma: La riconciliazione dei coniugi. (Article)

R. comments first on the "crisis" of marriage as an institution before dealing with the theme of "conjugal reconciliation". He feels that the ecclesial community does not follow the numerous pastoral and juridical documents that assert the Church's principle that the separation of spouses is only an extreme remedy once every attempt to overcome the crisis has been exhausted. He separately lists theological, canonical, civil, psychological and social reasons for reconciliation. He then refers to a good number of persons who, on account of their professional expertise, can be of help to the couples. From his own experience he gives some encouraging instances of successful reconciliation.

1161-1165

RR 2005, 79-81: F. C. Easton: Sanation of Marriage after Dissolution of Marriage in Favor of the Faith. (Opinion)

E. offers some reflections in a case where a Catholic woman married an unbaptised man outside the Church, the man having previously married, and where the possibility is now being considered of obtaining a dissolution of the man's previous marriage in favour of the faith and then granting a sanation of the second marriage (a simple convalidation being considered morally impossible in this instance).

BOOK IV, PART II: THE OTHER ACTS OF DIVINE WORSHIP

1166-1185

Sebastian S. Karambai: Ministers and Ministries in the Local Church. (Book)

See above, canons 375-572.

1171

RR 2005, 81-82: J. M. Huels: Loss of Blessing of Chalices. (Opinion)

H. suggests that the appropriate way of dealing with wine glasses which have been blessed but which are now deemed unsuitable for the distribution of the Precious Blood is for the bishop to issue a decree allowing the vessels to be used for profane purposes.

1183

HPR 4/05, 68: W. B. Smith: Non-Catholic Funerals? (Response)

S. reviews the provisions of the canon regarding funeral rites for non-Catholics, concluding that while these may be used for baptised non-Catholics, such rites are precluded for the non-baptised.

1183

RR 2005, 82-83: Patricia M. Dugan: Burial in Catholic Cemetery. (Opinion)

D. discusses whether a non-Catholic may be buried in a Catholic cemetery. Particular law and the judgement of the local Ordinary may provide the answer in individual cases.

BOOK IV, PART III: SACRED PLACES AND TIMES

1222

AkK 173 1/04, 42-91: N. Schöch: Umnutzung von Kirchen: Kirchenrechtliche Überlegungen zu einem aktuellen Problem. (Article)

S. deals with the use of churches for purposes other than that of worshipping God and offers some canonical reflections on such problems. In Germany this is a current problem because many churches, on account of their very small congregations, are facing the threat of closure. S. examines the canonical aspects of this problem, which is not new in the history of the Church.

1244-1248

QDE 18 (2005), 259-277: F. Marini: Il precetto della Messa festiva: un obbligo individuale per un'assamblea che celebra la memoria pasquale. (Article)

The aim of the obligation to attend Mass on Sundays and holydays is the encounter with the Risen Christ in the celebration and in Eucharistic communion. Unfortunately this remains more a theoretical objective than the concrete reality. M. expresses the view that one of the chief reasons for the widespread neglect of the obligation is a confused (rather than an excessively "strict" or "lax") pastoral policy. On the basis of the provisions of the Code and declarations by the Popes and the Italian Episcopal Conference he looks at the question of who is bound by the obligation; how, where and when it is to be satisfied; and when it ceases by reason of impossibility or dispensation. He dwells in detail of the faculty of the parish priest to dispense, and considers that dispensation itself could be a useful pastoral instrument for educating the faithful in the meaning of the obligation.

1246-1248

N XLI 5-6/05, 275-284: K. Irwin: Sunday Eucharist as the Heart of "The Lord's Day": *Dies Domini* Revisited. (Article)

I. looks at the relationship between the celebration of Sunday Eucharist and the theology of Sunday itself as the Lord's Day. The Sunday Eucharist in particular emphasises the element of *communio* in a way that is less characteristic of other days. Rest and recreation should also be characteristic alongside an act of worship. Where the Eucharist is not possible, some other form of celebration should take place. He also raises some questions about transferring Holy Days

to Sundays. In some cases this sits more easily with the theology of Sunday than in others.

1246-1248

QDE 18 (2005), 228-258: R. Coronelli: Origine e sviluppo del precetto domenicale e festivo. (Article)

See above, Historical Subjects (*1917 Code*).

1246-1248

RR 2005, 39-44: S. Oubre: Cruise Ship Passengers and Mass Attendance Obligation. (Opinion)

O. expresses the view that, since canons 1246-1248 (concerning the obligation to attend Mass) do not require one to do what is impossible, and because the *motu proprio Stella Maris* (1997) generally dispenses seafarers from obligations, rather than binding them, one can conclude that because of the nature of a cruise ship, even when an Apostleship of the Sea chaplain or a cruise ship priest is present, one is dispensed from the obligation.

1247

QDE 18 (2005), 278-288: C. Azzimonti: Il precetto del riposo festivo nelle circostanze attuali. (Article)

A. examines the meaning of the requirement in canon 1247 that the faithful abstain from "work or business that would inhibit the worship to be given to God, the joy proper to the Lord's Day, or the due relaxation of mind and body". The 1983 Code differs from that of 1917 in that it focuses less on "forbidding" activities and more on stressing the ends and values which the law wishes positively to foster (worship, joy, and relaxation), placing much greater reliance on the personal responsibility of the faithful. A. goes on to study how "Sunday rest" is (or is not) protected by the legislation of various European countries and by the European Union, and how the matter has been dealt with by a number of European episcopal conferences.

BOOK V: THE TEMPORAL GOODS OF THE CHURCH

1257

IE XVII 1/05, 293-302: Giovanni Paolo II: Lettera *Durante l'ultima cena* per il riconoscimento della personalità giuridica canonica pubblica a Caritas Internationalis, 16 settembre 2004 (con *nota* di J. Miñambres: *Status giuridico-canonico di Caritas Internationalis*). (Document and commentary)

See above, canons 312-320.

1273-1289

IE XVII 1/05, 293-302: Giovanni Paolo II: Lettera *Durante l'ultima cena* per il riconoscimento della personalità giuridica canonica pubblica a Caritas Internationalis, 16 settembre 2004 (con *nota* di J. Miñambres: *Status giuridico-canonico di Caritas Internationalis*). (Document and commentary)

See above, canons 312-320.

1276

RR 2005, 83-89: W. J. King: Mandated Diocesan Centralized Financial Service. (Opinion)

K. considers that a diocesan bishop may licitly mandate the participation of parishes and other ecclesiastical entities subject to his vigilance in centralised fiscal services and centralised property management services. This may include payroll services, management of parish funds and investments, general accounting services, and even property management services, but it must necessarily be conducted within the limits of law, and should be designed in a manner to be effective at civil law as well.

BOOK VI: SANCTIONS IN THE CHURCH

1311

FI 3 (2004), 27-64: F. Bueno Arus: Reflexión crepuscular sobre los elementos y caracteres de la teoría de la pena. (Article)

B. presents some reflections on the characteristics and difficulties of (civil) penal law, focusing on the theory of punishment. Punishments or penalties are necessary for the conservation and development of society. Although there are many theories in civil law as to the essence of a penalty, for B. it is fundamentally a privation (or limitation) of rights, imposed by reason of an offence committed. B. goes on to analyse at length the philosophical foundations of penal law, and to offer a series of conclusions.

1319-1320

QDE 18 (2005), 393-416: M. Mosconi: L'ordinario del luogo e la correzione penale del religioso (can. 1320). (Article)

After setting out the historical background to canon 1320 (which provides that the local Ordinary can constrain religious with penalties in all matters in which they come under his authority) and canon 591 (which allows for the possibility of exemption of religious institutes from the authority of the local Ordinary), M. studies the relationship between the principles of the rightful autonomy of religious institutes (canon 586) and the subjection of religious to the bishop in matters concerning the care of souls, the public exercise of divine worship and other works of the apostolate (canon 678). He identifies a wide range of matters in which the bishop has penal competence under canon 1320, and examines the ways in which penalties may be applied. M. concludes by saying that the purpose of canon 1320 is to ensure a correct relationship between religious institutes and dioceses. As Pope John Paul II stated in the post-synodal Apostolic Exhortation *Vita Consecrata* (1996), special attention by the bishops to the vocation and mission of institutes, and respect by the latter for the ministry of bishops, are two intimately linked expressions of the one ecclesial charity by which all work to build up the organic communion of the whole People of God.

1336

ELJ VIII 36 1/05, 32-40: D. Hope: Doctrine and Discipline. (Lecture)

H. gives a reflection on his personal experiences of the interplay between doctrine and discipline encountered during his period of office as Anglican Archbishop of York. He focuses on censures of deprivation and disqualification, appeals against deposition and summary revocation of clerical licences. This lecture was given at the Ecclesiastical Law Society conference held in York in March 2004.

1336

ELJ VIII 36 1/05, 41-59: G. Rowell: An Historical Perspective on Doctrine and Discipline in the Church of England. (Lecture)

In his talk to the Ecclesiastical Law Society in March 2004, R., Anglican Bishop of Gibraltar in Europe, sketches some of the important milestones in the history of doctrinal discipline in the Church of England.

1350

Proc CLSA 10/04, 93-113 (also **CLSN 142/05, 43-61**)**: J. I. Donlon: Remuneration, Decent Support and Clerics Removed from the Ministry of the Church.** (Seminar paper at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

See above, canon 281.

1362

J 65 (2005), 119-145: R. J. Kaslyn: Three Legal Texts and their Interconnection: An Overview. (Article)

The three texts in K.'s study are from the United States Conference of Catholic Bishops, Pope John Paul II, and the Congregation for the Doctrine of the Faith. They all relate to sexual abuses by clergy. K. considers the ecclesiological aspect of these abuses, and the provisions already in the 1983 Code of Canon Law both in regard to those who commit them and the right to due process for those accused of these or other offences. Finally he treats of the Substantive Norms that accompany the *motu proprio Sacramentorum Sanctitatis Tutela*.

1364

ELJ VIII 36 1/05, 32-40: D. Hope: Doctrine and Discipline. (Lecture)

See above, canon 1336.

1364

ELJ VIII 36 1/05, 41-59: G. Rowell: An Historical Perspective on Doctrine and Discipline in the Church of England. (Lecture)

See above, canon 1336.

1364

RR 2005, 27-28: Congregation for the Doctrine of the Faith: Former Catholic, Later Ordained an Orthodox Priest, Seeks Readmission to the Catholic Church. (Document)

Text of a letter from the Congregation for the Doctrine of the Faith confirming that a former Catholic who became an Orthodox priest, and who now requested readmission to the Church as a layman, could be absolved from censure once the sincerity of his repentance and his desire to return to the Church had been ascertained. For the purposes of receiving orders the irregularities in canons 1041 2° and 1044 §1 remained, and dispensation was reserved to the Holy See.

1382

FI 3 (2004), 195-229: Z. Tracz: El iter redaccional de los cánones 953 y 2370 del Código de Derecho Canónico 1917 (un ejemplo del proceso de elaboración del primer Código de Derecho Canónico). (Article)

See above, Historical Subjects (*1917 Code*).

1395

IC XLV 90/05, 557-608: J. Ferrer Ortiz: La responsabilidad civil de la Diócesis por los actos de sus clérigos. (Article)

See above, canon 128.

1395

J 65 (2005), 119-145: R. J. Kaslyn: Three Legal Texts and their Interconnection: An Overview. (Article)

See above, canon 1362.

1395

Per XCIV 2/05, 275-340: R. E. Jenkins: On the suitability of establishing clerical sexual abuse of minors (c. 1395 §2) as an irregularity *ex delicto* to the reception and exercise of orders. (Article)

See above, canon 1041.

1395

Proc CLSA 10/04, 115-136: R. E. Jenkins: The Charter and Norms Two Years Later: Towards a Resolution of Recent Canonical Dilemmas. (Seminar paper at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

J. looks at the United States Conference of Catholic Bishops' *Charter for the Protection of Children and Young People* and *Essential Norms*. He covers issues of substantive and procedural law, looking forward as well as back.

1395

RR 2005, 44-46: R. Jenkins: Bishop's Executive Powers in Dealing with Past Acts of Abuse. (Opinion)

If a bishop decides to address the case of a priest accused of sexual abuse committed in the distant past and prior to ordination, against a minor over the age of sixteen, he is free to do so, so long as he acts lawfully. He cannot initiate a penal process, since either the act was not a crime at the time it was perpetrated (the minor being above the age limit), or else the period of prescription has run. Moreover, because the 1983 Code abrogated the sanction against lay abuse of minors, those who committed such an act can no longer be punished for it. However, the bishop is still free to exercise executive power of governance to deal with the situation, which in the United States context falls within the scope of the *Charter for the Protection of Children and Young People.*

1395

RR 2005, 89-91: W. H. Woestman: Dismissal from the Clerical State for the Sexual Abuse of a Minor. (Opinion)

A superficial reading of the 1983 Code and the United States Conference of Catholic Bishops' *Essential Norms* may wrongly lead one to think that a duly established ecclesiastical court can impose dismissal from the clerical state for an offence of sexual abuse against a minor under sixteen, committed prior to 27 November 1983. If the judges think that the most grave circumstances warrant such a decision, they can recommend to the diocesan bishop that he request the Congregation for the Doctrine of the Faith to petition the Holy Father to dismiss *ex officio* the cleric from the clerical state.

1395

RR 2005, 91-94: G. T. Jorgensen: Use of Expert and/or Expert Report in Penal Trial or Administrative Action. (Opinion)

See below, canons 1574-1581.

BOOK VII: PROCESSES

1400

RDC 55 1/05, 59-94: K. Martens: Les procédures administratives dans l'Église catholique: les initiatives en droit particulier et le Code de 1983. (Article)

See below, canon 1733.

1403

IE XVII 1/05, 55-73: J. L. Gutiérrez: I laici, la politica e il martirio. (Article)

According to Benedict XIV martyrdom is death willingly accepted for the sake of the Christian faith or of another virtue connected to faith – *fides credendorum vel agendorum*. G. poses the question why the lay people who were declared martyrs during the twentieth century are very few in proportion to the countless numbers of faithful killed by militants of absolutist or Marxist ideologies. In general terms it can be said that religious institutes – especially those of men – usually have a postulator to promote the causes of their members, but this is not the case with diocesan curias. But there are also other factors to be considered. In the majority of cases the proofs of the process aim to show that the lay person had not taken part in political matters or trade unions, which tends to exclude a significant number of potential candidates for a proclamation of martyrdom. On the other hand, the presumption in the case of persecution is that the violent death of priests and of religious, men or women, was caused by hatred of the faith. G. studies martyrdom within the context of the vocation of lay people to holiness through temporal tasks. The first and immediate sphere of the responsibility of lay people lies in "the vast and complex field of politics, social affairs, and the economy." In this light G. studies: proofs of martyrdom, "hatred of the faith" on the part of the killers, the exercise of the supernatural virtues, the meaning of "accepting death for the sake of the faith", and proofs of hatred of the faith, and of death being accepted out of faith.

1421

IC XLV 89/05, 13-33: Z. Grocholewski: La función del juez en las causas matrimoniales. (Article)

This study presents some reflections on the figure of the judge in marriage cases, as an individual, as an applier of justice, and in most cases as a priest.

The work of a judge is carried out amid difficulties which have an effect on married life in the modern Western world and on the approach adopted in some marriage cases. The judge must always have a thorough preparation and an awareness of the special value of marriage, which is a fundamental right of the faithful. The judge must particularly take into account the principle of *favor matrimonii* as an inspiration for the whole of matrimonial canon law. He must undertake this task as a ministry of truth and charity, aimed at the good of souls. There are important principles governing the activity of the judge in the course of directing matrimonial processes. The criteria contained in the teachings of Pope John Paul II are particularly rich and informative on this subject.

1423

IE XVII 2/05, 569-597: Conferenza Episcopale del Belgio: Erezione dei Tribunali Interdiocesani fiamminghi e francofoni di prima e di seconda istanza, 1993-2004 (con *nota* di J.-P. Schouppe, *L'érection des tribunaux flamands et francophones de première et de seconde instance dans la province ecclésiastique de Belgique*). (Document and commentary)

These are the texts of the decrees of the Episcopal Conference of Belgium and the Apostolic Signatura for the establishment in Belgium of Flemish and French-speaking interdiocesan tribunals of first and second instance. In his commentary S. provides information regarding the political and linguistic context of federal Belgium, the motives behind this new judiciary ecclesiastical organisation, and a juridical examination of the decrees of erection.

1439

IE XVII 2/05, 569-597: Conferenza Episcopale del Belgio: Erezione dei Tribunali Interdiocesani fiamminghi e francofoni di prima e di seconda istanza, 1993-2004 (con *nota* di J.-P. Schouppe, *L'érection des tribunaux flamands et francophones de première et de seconde instance dans la province ecclésiastique de Belgique*). (Document and commentary)

See above, canon 1423.

1440

SCL I (2005), 463-466: A. Mendonça: Re-presentation of a Marriage Case after an Un-appealed Negative Decision. (Article)

Even when a case has received a negative first instance decision, provided that it has been closed without appeal, that same tribunal is competent to examine the same marriage on different grounds.

1445

IE XVII 2/05, 385-415: J. Canosa: La funzione della giurisprudenza della Segnatura Apostolica nello sviluppo del Diritto amministrativo canonico. (Article)

See above, canons 35-47.

1445

Per XCIV 1/05, 43-117: G. P. Montini: La prassi delle dispense da leggi processuali del Supremo Tribunale della Segnatura Apostolica (art. 124, n. 2, 2ª parte, Cost. Ap. Pastor Bonus). (Article)

See above, canon 87.

1445

RR 2005, 94-95: P. L. Golden: Appeal of a Decision of a Roman Dicastery to the Apostolic Signatura. (Opinion)

In response to a request from a diocesan bishop the Congregation for the Clergy clarified that a priest could not adopt a child because of his obligation to celibacy (see *Canon Law Abstracts,* no. 94, p. 30). G. considers that no appeal lies to the Apostolic Signatura against the Congregation's decision, as it is not contended that the Congregation violated any law in its deliberation or acted contrary to any established procedure.

1474

RR 2005, 96-97: N. Schöch: Certification of the Authenticity and Completeness of the Acts to be Sent to the Second Instance Tribunal by the Notary. (Opinion)

S. sets out the requirements for ensuring the authenticity and completeness of copies of the acts of the case sent on from the first instance tribunal to the appeal tribunal.

1483

RR 2005, 97-99: A. J. Espelage: Advocates in Marriage Nullity Cases. (Opinion)

E. looks at the role of an advocate in a marriage nullity case, and the qualities required.

1514

RR 2005, 99-104: A. Mendonça: Change or Addition of a Ground *Ex Officio*. (Opinion)

A. sets out the conditions which need to be fulfilled if a change of ground of nullity *ex officio* by a judge is to be valid: all the parties need to be informed and have the reasons for the change explained to them. The judge could also invite the promoter of justice to intervene and introduce the new ground.

1520-1525

RR 2005, 105-108: N. Schöch: Resumption of Marriage Nullity Case. (Opinion)

S. discusses the considerations that apply where, after abatement or renunciation, it is wished to resume the case at first, second or third instance.

1526-1599

QDE 18 (2005), 313-328: P. Bianchi: La fase istruttoria nel processo di nullità matrimoniale: non solo indagine. (Conference presentation)

Making use of the addresses of Pope John Paul II to the Roman Rota, and an article by Cardinal Zenon Grocholewski, B. offers a series of reflections on the characteristics of the instruction phase of matrimonial nullity proceedings,

taking into account the strongly "pastoral" aspect which ought to be a feature of this direct encounter with people in difficulty. As the Pope made clear on many occasions, this pastoral aspect – and the *salus animarum* – are closely linked to the search for objective truth. B. goes on to describe the virtues and qualities required of those involved in examining the case, and the purpose of the involvement of the various parties in the process. Finally he reflects on the need to attain moral certainty, which implies the obligation to seek all possible elements of proof.

1527

RR 2005, 91-94: G. T. Jorgensen: Use of Expert and/or Expert Report in Penal Trial or Administrative Action. (Opinion)

See below, canons 1574-1581.

1574-1581

Proc CLSA 10/04, 137-151 (also **CLSN 142/05, 62-73**)**: G. T. Jorgensen: The Role of the Expert in Tribunal Proceedings.** (Seminar paper at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

J. explains the canonical doctrine and jurisprudence on the role of the expert and focuses on practical problems which create difficulties between judges and experts.

1574-1581

RR 2005, 91-94: G. T. Jorgensen: Use of Expert and/or Expert Report in Penal Trial or Administrative Action. (Opinion)

G. sets out a number of considerations to be borne in mind when it is wished to introduce a psychological evaluation into a penal trial or administrative proceeding, to ensure that such evaluation is lawful.

1598

RR 2005, 109-111: A. Mendonça: Publication of New Proofs Revisited. (Opinion)

M. argues that the wording of *Dignitas Connubii* (article 236) is deliberately designed to make clear that any new proofs collected after publication of the acts at the request of the parties or *ex officio* by the judge (cf. canon 1598 §2)

must be published in accordance with canon 1598 §1 and 1600 §3. The only discretion allowed to the judge in relation to the publication of the acts is that, in order to avoid a most grave danger, he may decree that a specific act is to be shown to no one.

1608

J 65 (2005), 146-180: W. Kowal: Moral Certainty and Truth Justification. (Article)

K. wishes to study the logical structure of formation of certainty in the course of ecclesiastical trials. The term has a long history but with various and not always clearly defined meanings. Pius XII in 1942 offers a convenient start for K.'s study. Canon 1608 states that moral certainty is derived from the acts of the case. The source of moral certainty is not only the facts of evidence but also their canonical interpretation following proper methodological rules. Paul VI advised judges that they are judges of the actions of others but not judges of the law. The judge must derive his certainty *ex actis et probatis.*

1608

Proc CLSA 10/04, 137-151 (also **CLSN 142/05, 62-73**)**: G. T. Jorgensen: The Role of the Expert in Tribunal Proceedings.** (Seminar paper at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

See above. canons 1574-1581.

1608

QDE 18 (2005), 313-328: P. Bianchi: La fase istruttoria nel processo di nullità matrimoniale: non solo indagine. (Conference presentation)

See above, canons 1526-1599.

1608

RR 2005, 28-30: Pope John Paul II: Seeking the Truth in Marriage Annulment Cases. (Address)

Text of Pope John Paul II's Address to the Roman Rota, 29 January 2005, in which he stresses the need for all those involved in the process to search for the objective truth about a marriage, and not to be led by a false compassion that would seek to equate a failed marriage to a marriage that is "null and void". The

truth has to be sought despite all the inconveniences that may derive from such knowledge. It is necessary to resist the fear of the truth that can at times stem from the dread of annoying people.

1671

IE XVII 1/05, 303-333: Pontificio Consiglio per i Testi Legislativi: Nota circa la validità dei matrimoni civili celebrati nel Kazakhstan nel periodo comunista, 13 maggio 2003 (con *nota* di M. A. Ortiz, *La validità del matrimonio civile celebrato da battezzati nella Chiesa ortodossa*). (Document and commentary)

See above, canon 1059.

1671-1691

CLSN 142/05, 30-42: G. Read: *Dignitas Connubii*: Instruction to be Observed by Diocesan and Interdiocesan Tribunals in Handling Causes of the Nullity of Marriage. An Introductory Comment. (Article)

R. begins by pointing out that his article is not a line-by-line commentary; rather, his aim is to highlight points of interest to those working in tribunals. He believes that the Instruction provides a good deal of clarification on points not spelt out in the Code. He briefly reviews the titles in the Instruction. The eight articles setting out general principles, he believes, will repay close attention; they deal with such matters as the marriage laws that govern the unbaptised, and the implications of this. R. then goes on to review the other titles. Overall he believes the Instruction to be a most useful document.

1671-1691

For XVI/05, 42-45 (also **SCL I (2005), 11-14**)**: Pope John Paul II: Uphold the truth of Church teaching on Marriage. Address to the Members of the tribunal of the Roman Rota, 29 January 2005.** (Address)

This is the text of the Pope John Paul II's address to the Rota in 2005. The Holy Father warns of the danger of a form of corruption in putting what are claimed to be pastoral needs ahead of truth. He reminds bishops of their personal responsibility for their tribunals, and points out the intrinsic link between Church norms and doctrine.

1671-1691

IC XLV 89/05, 13-33: Z. Grocholewski: La función del juez en las causas matrimoniales. (Article)

See above, canon 1421.

1671-1691

IC XLV 89/05, 259-269: J. I. Bañares: La dimensión moral de la actuación en los procesos de nulidad matrimonial. Comentario al discurso de Juan Pablo II al tribunal de la Rota Romana de 29.I.2005. (Commentary)

B. comments on the 2005 address of Pope John Paul II to the Rota, in which the Pope highlighted the ethical dimension of tribunal activity, including the responsibility of bishops with regard to judges and also with regard to the results of judicial activity in the tribunals; and the responsibility of the conscience of the spouses. In relation to the behaviour of judges and lawyers, the Pope emphasised the most common dangers, and laid stress on the quest for the truth which must necessarily guide the whole process: a truth which exists objectively and can be found.

1671-1691

Per XCIV 3/05, 417-476: G. P. Montini: L'istruzione *Dignitas Connubii* nella gerarchia delle fonti. (Presentation)

This is the text of M.'s presentation to the 40th Colloquium of the Canon Law Faculty of the Pontifical Gregorian University held in Brescia in June 2005. The Instruction *Dignitas Connubii* appeared in February 2005. It regulates how cases for nullity of marriage are processed in the Church's tribunals. M. offers some reflections on the nature of the Instruction itself and its place in what he calls the "hierarchy of sources". He concludes that the Instruction is not one of those intended by canon 34, but a special kind of Instruction.

1671-1691

Per XCIV 3/05, 477-507: J. Kowal: L'istruzione *Dignitas Connubii* e la competenza della Chiesa circa il matrimonio dei battezzati. (Article)

The Church's competence in the matter of the marriage of the baptised is dealt with in articles 2-4 of the Instruction *Dignitas Connubii.* In this article, K. makes a brief presentation of the doctrinal basis of this competence before proceeding to analyse the articles of the Instruction. It is his opinion that these

articles have filled a *lacuna iuris* that emerged when the present canon 1059 – referring only to the marriage of Catholics (not "the baptised" as the corresponding canon 1016 of the 1917 Code had it) – was promulgated.

1671-1691

Per XCIV 3/05, 509-542: P. Bianchi: L'istruzione *Dignitas Connubii* e il c. 1095. (Article)

The Instruction *Dignitas Connubii* makes explicit reference in a number of articles to canon 1095 (cf. articles 56 §4; 203; 205; 209; 251). B. examines these parts of the Instruction and finds that they constitute a very useful aid to the correct application of canon 1095 in matrimonial tribunals.

1671-1691

QDE 18 (2005), 342-363: G. P. Montini: L'istruzione *Dignitas connubii* sui processi di nullità matrimoniale. Una introduzione. (Article)

M. gives a summary of the background to and the reasons for *Dignitas Connubii*, and of its principal aims, before investigating the juridical nature of the document, taking as his starting point its own description of itself as an "Instruction". He analyses some of the objectives that emerge from the document, including the desire to provide a single text which gathers together the procedural law governing marriage cases and which facilitates the application of general procedural norms to such cases. In this latter regard the guiding principle seems to be that contained in canon 1691. M. examines some of the "novelties" which *Dignitas Connubii* contains: these include the permissibility of equivalent or substantial conformity of decisions (art. 291); the possibility of a common procurator or advocate for the parties (art. 102); a greater attention paid by the Instruction to canons 1095 2° and 3°; a change of approach regarding marriages involving non-Catholic Eastern rite Christians (art. 4); a general "toning down" of contentious terminology; a modified interpretation of the rights of recourse against rejection of the *libellus* (art. 124); and the authoritative provision in art. 127 regarding the advisability of proposing to the parties the formulation of the doubt so that they may respond. M. then goes on to a further discussion of the administrative (non-legislative) nature of *Dignitas Connubii*, and the manner in which it binds. The document is capable of creating objective law in virtue of the pontifical mandate on which it is based, and the autonomous juridical value of the material it incorporates (authentic interpretations; decrees and declarations of the Apostolic Signatura; and jurisprudence of the apostolic tribunals).

1671-1691

QDE 18 (2005), 364-375: B. Uggè: Le terminologia non contenziosa dell'istruzione *Dignitas connubii*. (Article)

In several ways the terminology used in the Instruction *Dignitas Connubii* is less "contentious" than the corresponding language of the 1983 Code. The term *lis* ("suit") is eliminated and replaced by terms such as *causa*, *instantia*, etc.; the *litis contestatio* ("joinder of the issue") is now referred to as *formula dubii* ("formulation of the doubt"); while several other "contentious" terms are either reduced in number, or else softened in some way. In view of this U. analyses the nature of the matrimonial process, and concludes that, although it has some special characteristics, it still retains certain "contentious" aspects. This is necessarily so since, as Pope John Paul II reminded the Rota in 1996, marriage is not a good that can be disposed of at will, and the ultimate goal of the matrimonial process is the determination of the objective truth regarding its validity or otherwise. Hence there needs to be a procedure which ensures that all the necessary proofs and arguments are adduced, and in particular – in cases where both spouses are seeking a declaration of nullity – that no evidence *pro vinculo* is overlooked or undervalued. Nevertheless the Instruction makes it clear that the matrimonial process, while being "judicial", is a special kind of process which cannot be considered as exactly equivalent to the ordinary contentious process.

1671-1691

QDE 18 (2005), 376-392: P. Bianchi: Il can. 1095 nell'istruzione *Dignitas connubii*. (Article)

This is a summarised version of the article *L'istruzione Dignitas Connubii e il c. 1095* appearing in Per XCIV 3/05, 509-542 (see abstract on preceding page).

1671-1691

RR 2005, 112-113: A. J. Espelage: Impact of *Dignitas Connubii* on Tribunal Ministry. (Opinion)

E. explains that the Instruction *Dignitas Connubii* is a tool to offer a deeper understanding of the human person and of those things required of the person to be capable of entering and sustaining a conjugal covenant. It provides information for conducting a process that is fair and honest to both the petitioner and the respondent.

1673

Proc CLSA 10/04, 13-25: R. J Flummerfelt: Theology of Marriage: Complementarity between the Latin and Eastern Codes. (Address at the 2004 Convention of the Canon Law Society of America, Pittsburgh, Pennsylvania)

See above, canons 1055-1165.

1673

SCL I (2005), 463-466: A. Mendonça: Re-presentation of a Marriage Case after an Un-appealed Negative Decision. (Article)

See above, canon 1440.

1678

QDE 18 (2005), 313-328: P. Bianchi: La fase istruttoria nel processo di nullità matrimoniale: non solo indagine. (Conference presentation)

See above, canons 1526-1599.

1682

SCL I (2005), 95-146: A. Mendonça: Recent Rotal Jurisprudence on Marriage Nullity Cases Judged in Accord with Canon 1682, §2. (Article)

M. comments briefly on the implications of canon 1682 §2, particularly in the light of *Dignitas Connubii,* article 265. The purpose of the study is to look at the nine decrees of ratification issued by the Roman Rota during the previous year to see what light they throw on the decision to ratify rather than refer to the ordinary procedure. A brief summary is given of the decrees in chronological order, and by subject matter.

There were four cases concerning consensual incapacity (canon 1095 2°-3°). Defilippi (6 February 2003) considers the question of internal freedom in a pregnant sixteen-year-old, and distinguishes this from the external infliction of fear. The second case, before Alwan (10 February 2004), confirms the second instance decision before Erlebach on incapacity, based on narcissistic personality disorder, and comments on the use of experts, and the partnership of life. The third case before Monier (11 June 2004) arose from alcohol and drug abuse. The fourth case, before Sciacca (30 June 2004), also concerned lack of internal freedom.

There was one case each of deceit and error determining the will. The deceit case, before Sciacca (28 May 2004), concerned a Jehovah's Witness who pretended to become a Catholic before the wedding, but reverted immediately afterwards. The case of error came from Nigeria, and involved syncretistic beliefs and the acceptance of polygamy. Defilippi (1 April 2004) explains the principles involved in explicit exclusion and error determining the will in the context of someone baptised but not formed in the Catholic Church

There were also two cases of partial simulation, one on both fidelity and indissolubility, one on the latter alone. In the first, Pinto (21 February 2003) focuses only on the factual side. In the second, Stankiewicz (17 July 2003) highlights the jurisprudential principles. The final case was defect of canonical form through lack of delegation (before Monier 26 March 2004). This involved a guest priest, cousin of the bride, who was left to celebrate the marriage by a religious, parish priest of a neighbouring parish, whom the local parish priest had asked to officiate. The celebrant had neither asked for nor been given delegation.

1682

SCL I (2005), 359-402: A. Mendonça: Substantive and Procedural Jurisprudence of the Roman Rota as Reported in its *Relazione Annuale 2004.* (Article)

See above, canons 1084-1103.

1717-1731

J 65 (2005), 119-145: R. J. Kaslyn: Three Legal Texts and their Interconnection: An Overview. (Article)

See above, canon 1362.

1722

RR 2005, 49-53: J. M. Ritty: Balancing Rights of Accused Cleric and the Good of the Community. (Opinion)

Dealing with the balance between the rights of the community and the rights of the priest is one of the most difficult questions facing bishops today. In an attempt to achieve this balance, many dioceses have implemented policies and practices which are too restrictive and punitive. In the long run, restricting the rights of individual persons undermines the good of the community. R. states

that a better balance must be sought by looking to the law. He points out how the powers of the bishop under canons 1722, 381 §1, and 223 §2 are sometimes used in an incorrect way. It is important to avoid allowing the fear of bad publicity to become the overriding consideration.

1729

IC XLV 90/05, 557-608: J. Ferrer Ortiz: La responsabilidad civil de la Diócesis por los actos de sus clérigos. (Article)

See above, canon 128.

1732-1739

For XVI/05, 87-110: C. Scicluna: Recourse against Singular or Particular Administrative Acts of the Diocesan Bishop: Request for Revocation or Amendment; Hierarchical Recourse to the Holy See; Procedure before the Apostolic Signatura. (Paper)

This paper was given to the Canon Law Society of Great Britain and Ireland Conference at Renfrew, Scotland, in 2002. It covers: the general structure of administrative justice in the Church; preliminary definitions; the exercise of authority by the diocesan bishop; norms applicable to singular or particular administrative acts; the title for challenging a particular administrative act; attempts at reconciliation and local due process procedures; request for revocation or amendment; hierarchical recourse to the Holy See; recourse and procedure before the Apostolic Signatura.

1733

RDC 55 1/05, 59-94: K. Martens: Les procédures administratives dans l'Église catholique: les initiatives en droit particulier et le Code de 1983. (Article)

It is indispensable to have within the Church certain detailed administrative procedures by which to solve disagreements arising between ecclesiastical authorities and individuals. The Code of 1983 only allows for a reconciliation procedure and a procedure of hierarchical recourse. In this domain, says M., the involvement of civil law would be desirable. The development, at the level of particular law, of administrative tribunals could be envisaged. He says that the credibility of the Church is at stake here.

1745

RR 2005, 114-119: N. Schöch: Inspection of the Acts in Procedures for the Removal or Transfer of Parish Priests. (Opinion)

If a bishop wishes to remove a parish priest, and the priest opposes the removal with a proper defence, he must be offered the opportunity to inspect the acts according to canon 1745 1°. S. looks into various questions that arise: which acts are to be shown; whether originals or copies suffice; whether the priest needs to take an oath; whether single acts may be kept secret; whether names are to be published; whether a summary of some acts is sufficient; and whether the priest is entitled to delivery of a copy of the acts (in relation to this last point, S.'s view is that the priest is not so entitled).

EXCHANGE PERIODICALS

- African Ecclesial Review
- Angelicum
- Année Canonique
- Anuario Argentino de Derecho Canónico
- Apollinaris
- Archiv für katholisches Kirchenrecht
- Boletin Eclesiastico de Filipinas
- Claretianum
- Commentarium pro Religiosis et Missionariis
- Communicationes
- De Processibus Matrimonialibus
- Ephrem's Theological Journal
- Estudio Agustiniano
- Estudios Eclesiásticos
- Folia Canonica
- Folia Theologica
- Forum
- Forum Iuridicum
- Idee
- Il Diritto Ecclesiastico
- Immaculate Conception School of Theology Journal
- Indian Theological Studies
- Intams
- Irish Theological Quarterly
- Ius Canonicum
- Ius Ecclesiae
- Jnanatirtha
- The Jurist
- Laurentianum
- Law and Justice
- Louvain Studies
- Memorias (Curso de Actualización Canónica)
- Periodica
- Philippiniana Sacra
- Praxis Juridique et Religion
- Proceedings of the Canon Law Society of America
- Quaderni di Diritto Ecclesiale
- Quaerens
- Review for Religious
- Revista Española de Derecho Canónico
- Revista Mexicana de Derecho Canónico
- Revue Théologique de Louvain
- Revue de Droit Canonique
- Salesianum
- Studia Canonica
- Studies in Church Law
- Studium Ovetense
- Teología y Vida
- Theologische-praktische Quartalschrift
- Theologica Xaveriana
- Vida Religiosa
- Vidyajyoti

LIST OF ABBREVIATIONS, PERIODICALS AND ABSTRACTORS FOR THIS ISSUE

ACR	Australasian Catholic Record. V. Rev. I. B. Waters (Melbourne).
AkK	Archiv für katholisches Kirchenrecht, Mainz. Rev. M. Vattappalam (Palai).
Ang	Angelicum, Rome.
Ap	Apollinaris, Rome. Bishop J. Jukes OFM Conv. (Huntly).
CLSN	Canon Law Society Newsletter, London. Rev. J. Conneely (London).
ELJ	Ecclesiastical Law Journal. P. Barber (London).
ETL	Ephemerides Theologicae Lovanienses, Leuven. Canon D. Fogarty (Bognor Regis).
FC	Folia Canonica, Budapest. Rev. A. Saje (Ljubljana).
FI	Forum Iuridicum, Warsaw. (Abstracts supplied by publisher.)
For	Forum, Valletta. Rev. G. Read (Colchester).
HPR	Homiletic and Pastoral Review, New York. Rev. W. Becket Soule OP (Washington).
IC	Ius Canonicum, Pamplona. (Abstracts supplied by publisher.)
IE	Ius Ecclesiae, Milan. Rev. J. D. Gabiola (London).
INT	Intams, Belgium. Mrs M. Foster (Lancaster).
J	The Jurist. Rev. P. Corcoran SM (Dublin).
N	Notitiae, Rome. Rev. G. Read (Colchester).
Per	Periodica, Rome. Rev. A. McGrath OFM (Dublin).
Proc CLSA	Proceedings of the Canon Law Society of America. Rev. R. Sanders (Oxford).
QDE	Quaderni di Diritto Ecclesiale, Milan. Rev. P. Hayward (London).
RDC	Revue de Droit Canonique, Strasbourg. (Abstracts supplied by publisher.)
RfR	Review for Religious, Baltimore. Sr I. MacPherson SND (Fort William).
RR	Roman Replies and CLSA Advisory Opinions, Canon Law Society of America.
SCL	Studies in Church Law, Bangalore. Rev. G. Read (Colchester).
TPQ	Theologische-praktische Quartalschrift, Linz.
VC	Vita Consacrata, Rome. Rev. A. McGrath OFM (Dublin).
VR	Vida Religiosa, Madrid.

BOOKS RECEIVED

- Sebastian S. KARAMBAI: *Ministers and Ministries in the Local Church: A Comprehensive Guide to Ecclesiastical Norms*, St Pauls, Mumbai, 2005, xxix + 451pp., ISBN 81-7109-725-1 [see above, canons 375-572]